



MHRG010004602021	 	Presented on	: 30/04/2021
		Registered on	: 30/04/2021
		Decided on	: 17/03/2026
		Duration	: Y M D 04 10 17

Spl.(NDPS)Case No. 37/2021

Exhibit No.: 52

<p><u>IN THE COURT OF SESSIONS JUDGE, RAIGAD, AT: ALIBAG.</u> Presided Over by R. D. Sawant, Special Judge (NDPS)</p> <p>[Date of the Judgment - 17.03.2026] [Spl.(NDPS) Case No. 37/2021]</p> <p>(Details of FIR/Crime and Police Station)</p> <p>FIR No. 15/2021, Revdanda Police Station u/sec. 8(c),20(b)of NDPS Act, 1985</p>	
COMPLAINANT	The State of Maharashtra, Through the PSO, Alibag Police Station.
REPRESENTED BY	Smt. Smita Dhumal, Id. APP for the State.
Accused	Ashish Nandkumar Talekar, Age :- 50 years, Occu.:- Labourer, R/o : Revdanda, Near Theronda Phata Tal.Alibag, Dist. Raigad.
REPRESENTED BY	Ld. Adv. Shri. A. S. Bangera with Adv. Shri. Salavkar, for Accused

Date of Offence	01.03.2021
Date of FIR	01.03.2021
Date of Charge-sheet	30.04.2021
Date of Framing of Charges	27.07.2023
Date of commencement of evidence	16.02.2026
Date on which judgment is reserved	17.03.2026
Date of the Judgment	17.03.2026
Date of the Sentencing Order, if any	--

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether acquitted or convicted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of Sec.428 Cr.PC.
1.	Ashish Nandkumar Talekar	01.03.2021	29.04.2021	u/sec.8(c), 20 (b) of NDPS Act, 1985	Acquitted	--	--

LIST OF PROSECUTION / ~~DEFENCE~~ / COURT WITNESSES

A. Prosecution :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW-1	Swapnil Pandurang Tambadkar (Exh. 31)	Panch witness - seizure panchnama of Ganja
PW-2	ASI Rajesh Hiranman Patil (Exh. 37)	Informant
PW-3	API Shrikrushna Sambhaji Nawale (Exh. 44)	Investigating Officer

B. Defence Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
DW1		NIL

C. Court Witness, if any :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
CW 1		NIL

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

Sr. No.	Exhibit Number	Description
1	PW 1 - Exh. 32 Exh. 33 Exh. 34	Letter dt. 01.03.2021 informing accused that his search can be arranged before Magistrate Seizure Panchanama of Ganja with photograph Certificate of Destruction of Ganja
2	PW 2 - Exh. 38 Exh. 39	Report/Complaint Printed FIR
3	PW 3 - Exh. 45 Exh. 46 Exh. 47 Exh. 48 Exh. 49	Letter dt. 01.03.2021 given to Revdanda Police Station to register the crime against accused. Muddemal Receipt Letter dt. 02.03.2021 by which sample of seized muddemal was sent to FSL. C. A. Report dt. 27.08.2021 House search Panchnama dt. 02.03.2021.

B. Defence :

Sr. No.	Exhibit Number	Description
1.		NIL

C. Court Exhibits :

Sr. No.	Exhibit Number	Description
1	Exh. 21	Charge
2	Exh. 22	Plea/statement of Accused
3	Exh. 50	Evidence Close Pursis filed by Prosecution
4	Exh. 51	Statement of Accused u/sec. 313 of Cr. P.C.

D. Material Objects :

Sr. No.	Material Object Number	Description
1	Article-A	Sample Envelope

J U D G M E N T
(Delivered on 17/03/2026)

Accused **Ashish Nandkumar Talekar** is charged for the offences punishable u/sec.8(c) r/w. 20(b) of Narcotic Drugs & Psychotropic Substances Act,1985 (In short NDPS Act).

02. In short the prosecution case is as under,

(a) On 01.03.2021 PW2 informant ASI Rajesh Patil, then attached to Local Crime Branch, Alibag was present on general duty. PI Gawade called him, API Nawale, ASI Mande, Head Constable Mohite, Head Constable Hambir, Head Constable Mhatre, WPN Mhatre in his chamber and asked them to trace the wanted accused. After making the station diary entry no. 10 at 03.05 hours, they proceeded to Revdanda by private vehicles.

(b) At Revdanda near Theronda Phata, one person was noticed by them in suspicious condition with gunny bag in his hand, they stopped him. As per the instructions of API Nawale, ASI Mande arranged two panchas name Swapnil Tambadkar, R/o. Revdanda and Mehboob Gorme, R/o. Salav, Revdanda. API Nawale introduced panchas to the police team. API Nawale informed the panchas about the happenings and stated that the personal search of the apprehended person is to be taken.

Panchas shown readiness to act as a panch. In presence of panchas, the apprehended person was asked his name and address, he gave his name as Ashish Talekar, R/o. Theronda Phata, Revdanda, Tal. Alibag, Dist. Raigad.

(c) The inquiry was made about the gunny bag which was in the hands of Ashish Talekar. On inspection of the gunny bag greenish leaves and stalks were found. Ashish Talekar stated it is Ganja and he brought the same for sale. Thereafter API Nawale asked HC Hambir to bring the material required for drawing panchnama and seizing Ganja. API Nawale asked WPN Mhatre to arrange the weighing scale. After arranging the material, on weighing scale the contraband with the accused was weighed, it was found to be 8kg 400 gms. In his personal search the cash comprising 7 currency notes of denomination of Rs. 100/- and 1 currency note of denomination of Rs. 50/- were found.

(d) Two samples of 50 gms each were drawn in the brown colour envelope for the purpose of CA Analysis and for the records of the office. Labels were affixed. Panchas made signature on the labels. It was numbered as A1 and A2. The remaining Ganja weighing 800 kg 300 gms was seized in the same gunny bag. The cash was also seized in the envelope. Packing, sealing and labeling was done. API Nawale drawn the detailed panchnama, photographs were taken at the time of panchnama.

(e) Then they went to Revdanda Police Station alongwith accused and the seized contraband. ASI Rajesh Patil

lodge the report with Revdanda Police Station against accused. Crime no. 15/2021 came to be registered against accused u/sec. 8(c) r/w. 20(b) of NDPS Act.

(f) Investigation of the above said crime was entrusted to API Shreekrushna Nawale. After registration of crime he prepared muddemal receipt, forwarded the Samples to C. A. Office and obtained C. A. reports. He took house search of accused and prepared the panchnama. He recorded the statements of witnesses. After completion of investigation, due to complicity of accused, PSI Chimada filed charge-sheet against accused before the Special Judge NDPS Act.

03. Charge at Exh. 21 was framed against accused on 27.07.2023. The same was read over and explained to accused in vernacular. He pleaded not guilty to the said charge and claimed to be tried.

04. In order to establish the charge against Accused, prosecution examined 3 witnesses and relied on documentary evidence.

05. After completion of the evidence of the prosecution witnesses, the statement of Accused came to be recorded u/sec. 313(1)(b) of Cr.P.C. The defence of Accused is that of total denial and false implication. Accused did not examine any defence witness nor examined himself on oath.

06. Heard Ld.A.P.P. Smt. Dhumal for State and Adv. Shri. Salavkar for Accused. Perused evidence on record.

07. After hearing the submissions made by both parties and perusing records, following point arise for my consideration and I record my findings on the said point for the reasons stated by me hereinafter :

Sr. No.	Points	Findings
1.	Does prosecution prove that on 01.03.2021 at about 18.15 hours, near Theronda Phata, Revdanda, Tal. Alibag, accused was found in possession of 8.40 kg. Ganja without license and thereby committed an offence punishable u/sec. 8(c) r/w. 20(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ?	... Not proved
2.	What order ?	As per final order.

REASONS

As to Point No. 1 :-

08. In order to establish the charge against Accused, prosecution examined 3 witnesses listed above.

09. Ld. A. P. P. Smt. Dhumal submitted that when the police team was at Revdanda near Theronda Phata in search of wanted accused, present accused was found in suspicious condition and in his search, he was found possessing gunny bag with 8 kg 400 gms Ganja, without license. She further submitted that prior to his search, accused was informed about his right to have personal search before the Magistrate or Gazetted Officer u/sec. 50 of NDPS Act and thereby there was

compliance of Sec. 50 of NDPS Act. Panchnama was drawn at the spot. With the seized muddemal, accused was taken to Revdanda Police Station. PW 2 ASI Rajesh Patil lodged the report at Exh. 38 with Revdanda Police Station. Crime was registered against the accused. Muddemal articles were deposited with muddemal clerk vide Muddemal Receipt at Exh. 46. The seized muddemal sample was sent to C.A. Office on 02.03.2021 of which C. A. Report Exh. 48 was received on 19.06.2022. In view of the complicity of accused, accused is charge-sheeted. She further submitted that, the prosecution has proved the FIR, Panchnama, notice u/sec. 50 of NDPS Act. She further submits that CA report at Exh. 48 shows sample i.e. Ganja falls under Sec. 2(iii)(b) of NDPS Act, 1985. She further submitted that, in view of the the compliance of Sec. 50 and 52A of NDPS Act, the presumption u/sec. 35 of NDPS Act be drawn against accused and accused be convicted of the offences charged.

10. Ld. Adv. Shri. Salavkar for accused submitted that though independent witnesses were available at the spot, their services were not availed. Though Government Offices are situated within 2 kms from the spot, government panchas were not engaged nor the Magistrate or Gazetted Officer were arranged, or no provision was made in that regard. No personal noting are made by the police witnesses. No details of the weighing scale used for weighing of the samples and contraband are given. No details as to the minimum weight the

weighing scale can bear, are given. No FSL Form seems to be filled in, at the spot. No search of the vehicle is taken before proceeding to the spot. No details of the camera used for taking photographs are given. No date and time appears on the photographs allegedly taken at the spot.

11. Ld. Adv. Shri. Salavkar further submitted that no inventory panchnama seems to have been drawn as the inventory panchnama is not got exhibited in evidence. He further submits that the samples drawn vide inventory panchnama should have been sent to C.A. Office, however, the samples which were taken at the spot were sent to C.A. Office on 02.03.2021. Further, Muddemal receipt do not show the sample which was sent to C.A. Office was deposited with Muddemal Clerk. With these submissions, Ld. Advocate Salavkar submits that there is no compliance of section 42(2) of NDPS Act and there is violation of section 43 of NDPS Act. He further submitted that there is no compliance of section 50, 55, 52A and 57 of NDPS Act. He further submitted that the prosecution has failed to bring on record the cogent and reliable evidence and that the prosecution has failed to prove its case beyond reasonable doubt. Hence accused be acquitted.

Whether the compliance of Sec. 42 and 43 of NDPS Act is proved ?

12. Before I deal with the evidence on record, firstly I will like to refer to Sec. 42 and 43 of NDPS Act.

13. Sec. 42 of NDPS Act relates to Power of entry, search, seizure and arrest without warrant or authorization,

(1) any such officer of the Revenue, Drugs Control, Excise Police or any other department of 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 control 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 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 further that, if such officer has reason to believe that a search warrant or authorization 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 72 hours, send the copy thereof to his immediate official superior.

14. Sec. 43 of the NDPS Act read as under :-

Power of seizure and arrest in public place - Any officer of any of the departments mentioned in section 42 may—

(a) seize in any public place or in transit, any narcotic drug or psychotropic substance or controlled substance in respect of which he has reason to believe an offence punishable under this Act has been committed, and, along with such drug or substance, any animal or conveyance or article liable to confiscation under this Act, any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act 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;

(b) detain and search any person whom he has reason to believe to have committed an offence punishable under this Act, and if such person has any narcotic drug or psychotropic substance or controlled substance in his possession and such possession appears to him to be unlawful, arrest him and any other person in his company.

Explanation.—For the purposes of this section, the expression “public place” includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to, the public.

15. In the present case, accused was found with 8 kg 400 gms Ganja in the search of him at Theronda Phata, Revdanda. Theronda Phata is a public place, hence, as regard, accused is concerned, Sec. 43 of NDPS Act will come into play. Sec. 43 of NDPS Act relates to the Power of search, seizure and arrest in public place. Hence as regards accused, it was not necessary to obtain warrant or authorization for seizure and arrest in public place. Moreover, this case is not based on prior information and therefore no compliance as such u/sec. 42(2) of NDPS Act is warranted.

16. As regards compliance of Sec. 50 of NDPS Act, it is necessary to see the evidence of PW1 Swapnil Tambadkar and PW3 API Nawale. PW3 who has taken the personal search of accused claims that, prior to taking the personal search, accused

was informed in writing by giving letter at Exh. 32. He was informed that if he wants to give the personal search before other Magistrate, he can do so. Whereas, PW1 Panch Tambadkar has stated in evidence that API Nawale informed accused that they have right to search him, however, if he wishes, search can be arranged before the Magistrate, thereupon the said person stated that “ it is not necessary”. They can take his search, the signature of accused was obtained on letter dt. 01.03.2021 addressed to him at Exh. 32. Whereas the letter dt. 01.03.2021 at Exh. 32 shows API Nawale informed the accused that, u/sec. 50 of NDPS Act he has right to have personal search in presence of Gazetted Officer or Magistrate and if he demand so, the arrangement will be made accordingly. The notice/letter dt. 01.03.2021 is produced at Exh. 32.

17. On perusal of Exh. 32 it is seen that, the accused was informed as requisite u/sec. 50 of NDPS Act however, while informing the accused about his search he was not informed about his right u/sec. 50 of NDPS Act. Thus, there is partial compliance of Sec. 50 of NDPS Act. It is settled position that partial compliance is no compliance at all and hence, the prosecution of accused is vitiated. Hence, I hold that, there is no compliance of Sec. 50 of NDPS Act which is mandatory.

Whether the compliance of Sec. 52, 57 and 52A of NDPS Act is proved ? -

18. Sec. 52 of NDPS Act relates to disposal of persons

arrested and articles seized. It reads as under -

- (1) Any officer arresting a person under section 41, section 42, section 43 or section 44 shall, as soon as may be, inform him of the grounds for such arrest.
- (2) Every person arrested and article seized under warrant issued under sub-section (1) of section 41 shall be forwarded without unnecessary delay to the Magistrate by whom the warrant was issued.
- (3) Every person arrested and article seized under sub - section (2) of section 41, section 42, section 43 or section 44 shall be forwarded without unnecessary delay to—
 - (a) the officer-in-charge of the nearest police station, or
 - (b) the officer empowered under section 53.
- (4) The authority or officer to whom any person or article is forwarded under sub-section (2) or sub-section (3) shall, with all convenient dispatch, take such measures as may be necessary for the disposal according to law of such person or article.

There is no document produced on record to show that there is compliance of Sec. 52 of NDPS Act.

19. **Sec. 57 of NDPS Act** relates to report of arrest and seizure which reads as under -

Whenever any person makes any arrest or seizure under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior.

20. No report of arrest and seizure as required u/sec. 57 of NDPS Act seems to have been submitted to immediate official superior by PW 3, who allegedly stopped the accused and learnt about possession of Ganja with him. Thus, there is no compliance of Sec. 57 of NDPS Act as well.

21. Sec. 52A of NDPS Act 1985 relates to disposal of Narcotic Drugs and Psychotropic Substances. It provides that, when any Narcotic Drugs has been seized and forwarded to the officer in-charge of the nearest police station, the officer referred to in sub-section (1) shall prepare an inventory of such narcotic drug, containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drug or the packing in which they are packed, and other particulars relevant to the identity of the narcotic drug and make an application to the nearest Magistrate for the purpose of (a) certifying the correctness of the inventory so prepared or (b) taking, in the presence of such Magistrate, photographs of such drugs and certifying such photographs as true or (c) allowing to draw representative samples of such drugs or substances in the presence of such Magistrate and certifying the correctness of any list of samples so drawn. It further provides that, every court trying an offence under this Act, shall treat the inventory, the photographs of Narcotic Drugs and the list of samples drawn and certified by the Magistrate as primary evidence in respect of such offence. In the present case inventory do not

seem to be done before the Ld. Magistrate.

22. As regard the drawing of the samples, Advocate Shri. Salavkar submitted that the samples are required to be taken before the Magistrate at the time of inventory in view of the judgment of the Hon'ble Supreme Court in the case of **Simarnjit Singh Vs. State of Punjab, in Cri. M. No. 18419/2023 (e&m)** In Present case PW 1, PW 2 as also of PW 3 reflects that, the samples were drawn at the spot and packing sealing, labeling was done at the spot. Thereby the seizure of contraband and drawing of samples itself has come under the cloud. Act of PW 1 to PW 3 drawing samples from the contraband seized at the time of seizure is not in conformity with the law laid down by Hon'ble Supreme Court in the case of **Mohanlal**. Therefore I hold that there is no compliance of Sec. 52A of NDPS Act. This creates a serious doubt about the prosecution's case that substance recovered was Ganja. Seizure of Ganja at the spot itself becomes doubtful. Hence, the C. A. report at Exh. 48 is of no reliance to prove the prosecution case.

23. Thus, the prosecution has failed to prove the compliance of Sec. 50, 52, 52A, 57 of NDPS Act. There is no independent corroboration to the version of PW 2 and PW 3 who are police witnesses. Moreover, nothing was seized in the house search of the accused. The house search panchnama at Exh. 49 is admitted by the defence advocate. No documents of house seems to be seized to show the house search of accused has been done. There is no cogent and reliable evidence on

record to prove the guilt of accused and hence Sec. 35 of NDPS Act relating to the presumption of culpable mental state cannot be put into play. In view of the quality of the evidence above, the C.A. report at Exh. 48 is of no help to prosecution, though C. A. report shows that, sample sent to Regional Forensic Science Laboratory, Nashik is of Ganja. This leads me to conclude that the prosecution has failed to prove its case beyond reasonable doubt. In view of abovesaid discussion, benefit of doubt deserves to be granted in favour of accused. For the reasons above, I answer point No.1 accordingly in negative.

As to point No.2

24. In view of discussion above, I pass following order.

:: ORDER ::

1. Accused **Ashish Nandkumar Talekar**, is hereby acquitted u/sec. 235(1) of the Code of Criminal Procedure of the offences punishable u/sec. 8(c) r/w. 20(b) of Narcotic Drugs and Psychotropic Substances Act, 1985.
2. Bail bonds of accused stand cancelled, he be set at liberty.
3. Accused shall furnish surety of Rs.15,000/- and personal bond of like amount, in compliance of the provisions of section 437A of the Code of Criminal Procedure.
4. Sample Article-A and sample taken at the time of inventory before Chief Judicial Magistrate, Raigad-Alibag, be disposed/ destroyed after the appeal period is over and

in case the appeal is filed, after disposal of the same, whichever happens later, by following due procedure of law.

5. Muddemal property at Sr. No. 2 i.e. cash amount of Rs. 750/- deposited by prosecution in the Court be credited to Government.

(Dictated and pronounced in open court)

Alibag
Dt. 17/03/2026.

Sd/-
(R. D. Sawant)
Special Judge(NDPS),
Raigad-Alibag.

CERTIFICATE

I affirm that, the contents of this P.D.F file order are same, word to word, as per the original order.

Name of Stenographer : S. S. Puro (Grade- I)

Court : Principal District & Sessions
Court, Raigad-Alibag.

Date of Order/Judgment : 17.03.2026.

Order/judgment signed by
the Presiding Officer on : 17.03.2026

Order/judgment uploaded on: 20.03.2026

