





In the Court of Special Judge, NDPS Cases, Merta (Rajasthan)

(PO:Arun K Beriwal, District & Sessions Judge,Merta)

Special Session Case no:3/2021

**[Oldest Targeted case No:7]**

**In the matter of:**

State of Rajasthan Through Public Prosecutor Merta, Nagaur [Rajasthan]	 सत्यमेव जयते राजस्थान सरकार
<b>Vs</b>	
1. Ghanshyam S/o:Durgaram Aged:34 years R/o:Bag ki dhani, Bilara PS: Bilara District:Jodhpur [Rajasthan]	
2. Suresh S/o: Hanmatram Aged: 30 years, R/o:Sunaron ka Mohalla Gurjaron ki dhani Butati PS: Kuchera , District:Nagaur [Rajasthan]	
3. Ramniwas S/o: Dhannaram Aged: 32 years, R/o:Indas, PS: Sadar, District:Nagaur [Rajasthan]	

**Accused persons**

**Present:** Counsel for the State/P.P Shri Abhimanyu Sharma

Shri Bhawani Singh Advocates for Accused No.1

Shri Mahipal Choudhary Advocates for Accused No.2

Shri Suresh Choudhary Advocates for Accused No.3

**30.3.2026**

**J U D G M E N T**

1. This Judgment will dispose off the instant Special Session case whereby the accused persons had faced trial before this Court on allegation of having committed offence u/s. 8/15 of NDPS Act, 1985 in respect of recovery of total 288 kilograms & 230 grams of 'doda-chura' from the Truck no: MH 18 BG 2289 in occupation & possession of accused persons – Ghanshyam & Suresh which was found to be without any license. On disclosure statement of accused persons the co-accused/Ramniwas who is stated to have supplied the contraband to the main accused persons was got arrested by the Police.
2. That on 3.7.2020, a **tip-off/source-information** was received by the SHO/Padu kallan at 9:40 pm which was got recorded separately as **Source-information/Ex:P-1** & it was also recorded in **Rojnamcha/Ex:P-2** and later on sent to superior-officer through **PW:2Rajuram** vide **forwarding letter of information** addressed to Dy.SP, Degana and he came back after due delivery of information to superior-officer as per receipt on bottom of **Ex:P-26/Forwarding of information u/s.42 NDPS Act** showing receipt at 11:30 pm on 3.7.2020. The source-information was to the effect that a white color Truck NO: MH 18 BG 2289 is being driven by Ghanshyam Devasi & Suresh Gurjar & Bhuraram Jat are sitting at Annapurna Hotel aty Lampolai have heavy quantity of doda-post opium and they are about to move towards Nagaur side with '**narcotics drugs**' and if timely search is made than it may be got recovered therefrom.
3. The police team after due compliance reached Lampolai at Annaapurna Hotel at NH 89 and found the said white color Truck NO: MH 18 BG 2289 parked behind the Hotel and from driver side and conductor side Ghanshayam and Suresh were found sitting respectively therein. One per is stated to have fled away from the crime scene named-Bhuraram.

At about 11:05 pm on 3.7.2020 the Police team took the vehicle from behind the hotel & brought it in frontal side after making due lighting arrangement. Than, after due notice to accused persons as per source information, the Truck was searched & doda-chura stacked in 10 black color plastic bags, 1 white color small plastic bag & another 1 bag was found totalling 12 bags containing 288 kilograms & 230 grams of Doda-chura without any license and thus, a case was got registered u/s. 8/15 & 29 of NDPS Act,1985.

**Prosecution Witnesses:** [PW:1 to PW:16]

4. The prosecution in support of its case examined 16 witnesses details whereof are as under:-

PW:1/Narottam Singh [seizure officer & Art. 1 to 12],

PW-2/Rajuram [Team Member & Witness to Ex:P-26 to Ex:P-27,  
Ex:P-30 to Ex:P-31 to Ex:P- 33],

PW:3/Sushil [Independent Witness- Hostile],

PW:4/Rajveer Singh @ Nilu Banna [Independent Witness-Hostile],

PW:5/Govindram [Team Member & witness to Ex:P-7, Ex:P-12 &  
Ex:P- 35];

PW:6/Kalandar Khan [Team Member & Witness to Ex:P-7 &  
Ex:P-12 to Ex:P-13]

PW:7/Hariram [Team Member & Witness to Ex:P-19 to Ex:P-21]

PW:8/Tejaram [Team Member & witness to Ex:P-7];

PW:9/Chandaram [Carrier-FSL Witness to Ex:P- 20];

PW-10/Bhuraram [Team Member, Witness to Ex:P-7 & :Ex:P-11 to  
Ex:P-13]

PW-11/Ramjivan [Malkhan-In-charge,Witness to Ex:p-24/1.];

PW-12/Rooparam [IO, Witness to Ex:P-22];

PW-13/Harmendra [Team Member, Witness to Ex:P-7 & :Ex:P-12  
to Ex:P-13]

PW-14/Ashok Bissu [ IO witness to Ex:P-35 to Ex:P-38]

PW-15/Rajpal Singh [IO].

PW-16/Suman [IO]

5. The Prosecution got exhibited the **Exhibits P-1 to P-103 and were got exhibited by the Prosecution which are as under:-**

Ex:P-1/ Source Information  
Ex:P-2/Rojnamcha Entry of Source Information  
Ex:P-3/ Summoning of Independent Witness  
Ex:P-4/ Consent of Independent Witness  
Ex:P-5/ Consent of Independent Witness  
Ex:P-7/seizure of Illegal Doda-Post  
Ex:P-8/Notice u/s 50 NDPS Act to Ghanshyam  
Ex:P-9/Notice u/s 50 NDPS Act to Suresh  
Ex:P-10/Arrest Memo of accused Ghanshyam  
Ex:P-11/Arrest Memo of accused Suresh  
Ex:P-12/ Specimen Seal  
Ex:P-13/Destroyal Seal  
Ex:P-14/Re-seal  
Ex:P-15/Consent of Accused Ghanshyam  
Ex:P-16/Consent of Accused Suresh  
Ex:P-17/Notice u/s 52A NDPS Act to Ghanshyam  
Ex:P-18/Notice u/s 52A NDPS Act to Suresh  
Ex:P-19/Forwarding Letter SHO Padukallan to SP Nagaur  
Ex:P-20/Forwarding Letter SP Nagaur to SLSL Jaipur  
Ex:P-21/FSL Report dt: 14.7.2020  
Ex:P-22/Naksha-Mauka  
Ex:P-23/ FSL Report dt: 06.11.2020  
Ex:P-24/1/Malkhan Register  
Ex:P-25/F.I.R.  
Ex:P-26/Forwarding Letter SHO Padu Kallan to Dy.Sp Degana  
regarding sending information u/s 42 N.D.P.S. Act  
Ex:P-27/Forwarding Letter SHO Padu Kallan to Dy.Sp Degana  
regarding sending information u/s 57 N.D.P.S. Act  
Ex:P-28/Copy of Notice u/s 50 NDPS Act of Ghanshyam  
Ex:P-29/Copy of Notice u/s 50 NDPS Act of Suresh  
Ex:P-30 to Ex:P-34/Rojnamcha Entry  
Ex:P-35/Arrest Memo of accused Ramniwas  
Ex:P-36/161 Cr.P.C Statement of Rajveer Singh @ Nilu Banna &  
Certificate of 65-B  
Ex:P-37/CAF of Ramniwas  
Ex:P-38/Forwarding Letter  
Ex:P-39/Ordersheet of JM,Merta dt: 9.9.2020  
Ex:P-40/Forwarding Letter of JM Merta to SHO Padu Kallan  
Ex:P-41/ Verification Report u/s 8/15 NDPS in u/s 52-A NDPS of JM  
Merta  
Ex:P-43 to Ex:P-103/Photographs Of Inventory

6. Than **Ct.Bhuraram/PW:10** was directed by **SHO/Narottam/PW:1** to summon independent witnesses vide **Ex:P-3/Notice for summoning of Independent witnesses** who disclosed that none was found and thus Seizure-officer/narottam brought in two independent witnesses- **Sushil/PW:3 & Rajveer/PW:4** and they gave their consent vide **Ex:P-4 & Ex:P-5/consent of Independent witness**.
7. Thus, after due search of Truck of accused persons, 288 kilograms & 230 grams of 'doda-chura' [stacked in 12 bags] was recovered by seizure-officer. The accused-persons failed to show any license in support of their possession. Thus, an FIR No:122/2020 was registered by Police u/s. 8/15 & 29 of NDPS Act,1985 against the accused persons.
8. Thereafter, cognizance of offence u/s. 8/15 & 29 of NDPS Act was taken by this Court. Thereafter, on prima-facie satisfaction on the basis of material on record, charges were framed by this Court only against the accused for having committed offence u/s. 8/15 & 29 of NDPS Act, 1985 to which they pleaded not guilty & claimed trial.

**Submission of State:-**

9. That the Ld. Counsel for State submits that it is a case of due compliance of mandate of section 42 of NDPS Act,1985. There was also no need to issue any notice u/s. 50 of NDPS Act,1985 as the recovery was a informed recovery of drug from the truck and not on personal search of suspects.
10. It is also urged that the Prosecution has discharged the initial 'onus' of proving the 'possession' of contraband weighing **288 Kilograms & 230 grams of 'doda-chura'** which is a '**commercial quantity**' u/s.8/15 of NDPS Act, 1985 thus, now it is for the Defense to discharge their reverse-burden of proving that his possession was not 'conscious'. It is submitted that on failure of Defense the presumptions of 'culpable mental state' & 'conscious-possession' of contraband would stand

attracted & the Prosecution has duly established their case beyond all reasonable doubts.

11. It is also submitted that the prosecution has discharged the initial burden of proving the foundational fact of possession of the contraband and presence of the accused persons on the spot therefore, the requisite presumption u/s 35 & 54 of NDPS Act,1985 will come into picture qua 'culpable mental state' of accused persons and 'conscious possession' of contraband. No evidence has been led by the Defense to discharge their reverse burden. Thus, case of the Prosecution is proved beyond all shadow of reasonable doubts & the accused persons deserve to be convicted.

**Submission of Defense:-**

12. Ld. Counsel for Defense was heard for over two hours in this court. It is urged that there is clear violation of section 42 of NDPS Act,1985 since despite clear source information through accused himself given to the SHO/Narottam/PW:1 he although recorded the same in writing and sent it to his immediate superior officer but when the Truck was already within the control of police than there was no need to conduct the search after sunset without a warrant. It is urged that **seizure-Memo/Ex:P-7** mentions the time of search to be 11:10 pm on 3.7.2020 and the search/seizure stood completed on 1: 30 am on 4.7.2020. Thus, the seizure suffers from procedural defects. It is also submitted that there is huge difference in weight of contraband from the date of seizure till its disposal as per Inventory report. There is no certificate u/s. 65-B in support of CDR & no CCTV footages on record.
13. It is also urged that all the reports & compliance has been got done after seizure took place as a formality and there is no proper compliance of NDPS Act. It is urged that testimony of PW's are per-se contradictory with each other and basic provisions of search by

independence witness has not been adhered to in this case , thus acquittal be granted.

**Documentary Evidence in the backdrop of factual matrix:-**

14. This Court is alive to the settled legal position that “Man may lie but the documents do not..”. It is also evident that Witnesses are the eyes and ears of the Court. It is undisputed that testimony of witnesses are to be seen, appreciated & considered by the Court in totality & not in isolation. In this case, **Ex:P-1 to Ex:P-103** were marked & exhibited during the course of trial by the Prosecution.
15. That specimen sample & control sample of 500 grams each were drawn from 12 bags of doda-chura separately & balance 282 kilograms & 230 grams of doda-chura remained after drawing of sample.
16. That **Specimen seal report/Ex:P-12** is exhibited on record. The **seal destroyal report** is **Ex:P-13**. Copy of **notice u/s. 50 of NNDPS Act** is **Ex: P-8 & Ex:P-9 & carbon copy thereof is Ex:P-28 & Ex:P-29**.
17. That a **Search-cum-recovery Memo/Ex:P-7** was got prepared at 11:10 pm on 3.7.2020 by the SHO which bears the signature of accused, independent witnesses & the seizure team members.
18. That the accused/Ghanshyam & Suresh were given **notice of arrest u/s. 52 of NDPS Act vide Ex:P-17 & Ex:P-18** before effecting his arrest at 2:00 am & 2: 10 am on 4.7.2020 and thereafter they were arrested vide **Memo of arrest/Ex:P-10 & Ex:P-11** on 4.7.2020.
19. On completion of search & recovery after reaching the Police station with the accused. That the officer-in-charge of Police station took charge of article seized & delivered the same to Malkhana-Register vide **Ex:P-24/1** for seized contraband.
20. The remaining contraband and both control & specimen samples were handed over to Malkhana-in-charge by the seizure-officer/SHO as it is evident from extracts of **Malkhana-Register/Ex:P-24/1**.

That the seizure-officer also forwarded by personal messenger- an information u/s. 57 of NDPS Act,1985 vide **Ex:P-27** to the Suptd. Of Police Nagaur & CI for necessary compliance vide **Rojnamcha entries/Ex:P-30 & Ex:P-31.**

21. That on 4.7.2020, the **I.O/Ruparam/PW:12** went to the site in question and prepared a '**Naksa-mauka**' of **place of incident/Ex:P-22** at the instance of seizure-officer/Narottam.
22. Thereafter, seized samples were sent for examination by State FSL through **Ct.Chandaram/PW:9** vide **forwarding letter dated 13.7.2020 of SHO/Ex:P-19** and further forwarding letter of SP office vide **Exhibit:P-20 and the FSL Receipt/Ex:P-21** of FSL the samples containing 12 packet were received. The **FSL report is Ex:P-23.**
23. That Inventory report u/s. 52-A(4) of NDPS Act,1985 was prepared by the IO vide **Ex:P-39 to Ex:P-103.**
24. That the **FSL report/Ex:P-23** clearly pointed out & opined that:-

**“The extract of the sample packed in each of the packets marked ‘A-1’ to ‘H-1’ was found to contain chief constituents of opium i.e. phenanthrene alkaloids namely morphine, codeine and thebaine. Hence, the samples are of crushed capsules of opium-poppy”**

**Oral testimonies:-**

25. In oral testimony, the State has produced **PW:1 to PW:16** and their testimony insofar as it is germane to the case on manifold issue of Search, seizure etc u/s. 42 & 50 & forwarding of report to superior officer, apprising grounds of arrest u/s. 52, re-sealing & information to superior officer as envisaged u/s.57 is required to be appreciated by this Court.
26. The crux of testimony of '**Seizure-officer**'/Narottam/PW:1 is most relevant as he was the first witness to the '**recovery**' effected. This witness has testified on very many aspects of seizure & recovery of contraband from the accused.

27. In the entire cross-examination, there is not even a single question or suggestion given to this crucial witness/**Seizure-officer/PW:1 /Narottam** qua the alleged non-compliance provisions of NDPS Act,1985 and thus the testimony of this witness in his Chief-Examination becomes admissible in toto.
28. That **PW:3/Sushil & PW:4/Rajveer** were roped in as Independent witnesses. These witness **PW:3/Sushil & PW:4/Rajveer** have deposed categorically that they were witness to seizure-proceedings. However, PW;3/Sushil turned hostile.
29. That **PW:9/Chandaram** being carrier of sample to FSL has deposed that he took the sample from Malkhana on 13.7.2020 vide entry in **Malkhana-register/Ex:P-24/1** & as per **forwarding letter of SHO & SP office/Ex:P-19 & Ex;P-20** took the sample to FSL and vide receipt of **FSL/Ex:P-21** deposited the sample at State FSL and came back to Police-station.
30. That **PW:2/Ct.Rajuram** has deposed as carrier of information **u/s. 57 of NDPS Act/Ex:P-27** to superior officer & there is no specific cross of this witness by the Defense.
31. The seizure-team members viz:**PW:2/Rajuram, PW:5/Govindram & PW:6/Kalender Khan, PW:7/Hariram, PW:8/Tejaram & PW:10/Bhuraram** have fully supported the case of prosecution.
32. That **PW:11/HC-Ramjhiwan** was the **Malkahan-in-charge** who has deposed in respect of **Ex:P-24/1/Malkhana-Register** and there is specific cross examination by Defense on material aspects.
33. That **PW:12/IO/Ruparam** have deposed qua material aspects of investigation. This court has perused the record of the case minutely and scanned through the testimony of all seizure-team members which no where indicates that the seizure of drugs was done by the IO as alleged and on the contrary, every witness supports the view that

the act of seizure was effected by the **Seizure-officer/SHO/Narottam/PW:1** only and none else. Thus, mere and solitary version of IO that he had acted as seizure-officer remains uncorroborated from oral & documentary evidence.

34. All the circumstances appearing against the accused persons during the course of trial were duly put to them in their statement u/s. 313 Cr.P.C but there is only a bald denial by the accused persons and no defense evidence has been led despite opportunity having been accorded by this Court.

**Statement of accused persons u/s. 313 Cr.P.C:-**

35. The statement of accused u/s. 313 of Cr.P.C was got recorded before this Court & all the incriminating circumstances appearing against the accused was put to him in respect of the alleged offence. The accused made bald denial to the circumstances appearing against him and stated that false case has been filed against him & thus he sought permission to lead defense evidence which was accorded by this Court.

However, no defense evidence was led by the Accused persons.

**Plea of Non-compliance of section 42 of NDPS Act,1985**

36. Ld Counsel for Defense vehemently submits that despite clear information about suspects-Ghanshyam & Suresh to Narottam/PW:1, the mandate of section 42(1) & (2) of NDPS Act,1985 stands violated in this case by SHO/Narottam/PW:1. The police team headed by SHO/Narottam alongwith team members reached the spot as per information received from Kaluram without following due process & recovered the contraband.
37. That as regards recovery, the **Seizure-officer/SHO/Narottam/PW:1** has clearly deposed:-

“ समय 11.05 पी.एम पर दस्तयाबी कार्यवाही हेतु खाना होकर 11.10 पी.एम पर हम सभी जाबता मय गवाहान के अन्नपूर्णा होटल, लांपोलाई हाईवे एन.एच 89 पर पहुंचे, जहां होटल के पीछे की तरफ

मुखबीर द्वारा बताये हुलिये की गाड़ी दिखाई दी, जिसके पास मन एसएचओ मय जाब्ता, मय गवाहान के पहुंचे और गाड़ी की चालक दिशा की फाटक से एक व्यक्ति तथा खलासी की तरफ से एक व्यक्ति को पकड़ा तथा उक्त दोनो के साथ बैठा एक अन्य व्यक्ति अंधेरा का फायदा उठाकर भाग गया, उक्त दोनो को नाम-पता पूछा तो चालक ने अपना नाम घनश्याम रेबारी व खलासी साईड से पकड़े व्यक्ति ने अपना नाम सुरेश गुर्जर बताया व भागने वाला व्यक्ति का नाम भूराराम जाट बताया। इस पर सूचना मुखबीर से गवाहान व जाब्ते के समक्ष घनश्याम व सुरेश को अवगत करवाकर ट्रक को थोड़ा पीछे लेकर साईड से उक्त होटल के चौकीदार से रात्रि का समय होने से लाईट की व्यवस्था करवाई जाकर ट्रक के तिरपाल को हटाकर चैक किया गया तो ट्रक में प्याज के कट्टों के नीचे 10 कट्टे काले रंग के प्लास्टिक के, एक बोरी व एक सफेद कट्टा प्लास्टिक का पाया गया, जिन्हें खोलकर चैक किया व उपस्थित जाब्ते व गवाहान को सूंघाया, दिखाया, चखाया तो उक्त सभी 12 नगों मे मादक पदार्थ डोडा चूरा होना पाया गया, जिस पर उक्त दोनो व्यक्ति घनश्याम रेवारी व सुरेश गुर्जर को इतनी अधिक मात्रा में अवैध मादक पदार्थ डोडा चूरा रखने व परिवहन करने के परमिट व लाईसेंस बाबत् पूछा तो नहीं होना बताया, जिन पर उक्त का यह कृत्य जूर्म धारा 8/15 एनडीपीएस एक्ट का पाये जाने पर बतौर वजह सबूत उक्त 12 नगों को कब्जा पुलिस लिया। उक्त मादक पदार्थ के अतिरिक्त ट्रक में 260 जालीदार प्लास्टिक के कटों मे प्याज भरे हुए थे, जिनको इसी ट्रक मे रखवाया गया। उक्त टाटा ट्रक न एम. एच. 18 बी.जी 2289 को प्याज के कट्टों की आड में अवैध डोडा चूरा जिनका कुल वजन 288 किलो 230 ग्राम को उक्त व्यक्तियों द्वारा अपने कब्जे मे रखने व परिवहन करने पर उक्त ट्रक को बतौर वजह सबूत जब्त किया गया तथा फर्द जब्ती अवैध मादक पदार्थ डोडा पोस्त का चूरा 288 किलो 230 ग्राम व 260 जालीदार प्लास्टिक के कट्टों में प्याज मय उक्त ट्रक को बकब्जा घनश्याम व सुरेश गुर्जर जब्त किया।

A bare perusal of testimony of **PW:1/Seizure-officer** shows that despite clear apprehension in the mind of seizure-officer, no steps were taken by him to comply with the mandate of section 42(1) & 42(2) of NDPS Act,1985. No grounds of satisfaction was recorded by the

**PW:1/SHO/Narottam** about the suspects and no search-warrant was obtained for conducting search in evening after sunset.

38. Further there is testimony of **PW:2/Rajuram** has deposed:-

“ उस रोज थानेदार जी नरोत्तमसिंह ने मुझे धारा 42 एनडीपीएस एक्ट की सूचना बंद लिफाफा सी.ओ, साहब डेगाना देने हेतु सुपूर्द किया, जिसे मैंने उनको सौंपा, जिसकी प्रति प्रदर्श पी 26 है, जिस पर सी से डी बाद मे उनकी प्राप्ति का पृष्ठांकन मय हस्ताक्षर के है। उक्त सूचना की एक प्रति एसपी साहब नागौर के काईम ब्रांच मे निर्देशानुसार सुपूर्द की थी। तत्पश्चात् दिनांक 04.07.2020 को हस्तगत प्रकरण मे एक तथ्यात्मक रिपोर्ट धारा 57 एनडीपीएस एक्ट की सूचना सी.ओ, डेगाना को सुपूर्द की थी, जो प्रदर्श पी 27 है ”

The testimony of **PW:2/Rajuram** is categorical wherein he deposed that only the vehicle of accused was stopped and no other vehicle was stopped by the Police team. He had also deposed that as per the information received from the SHO, the said vehicle was intercepted.

39. Moreso, **PW:3/Sushil & PW:4/Rajveer/ Independent witnesses** have turned hostile, however, their testimony can be relied upon to the extent it corroborates the case of the State/Defense u/s. 154 Evidence Act,1872.

40. In the same lines, **PW:5/Govindram** has deposed:-

“ उस रोज मुखबिर की इत्तला पर एसएचओ नरोत्तमसिंह के साथ, मैं, सुखाराम, तेजाराम, कलंदर खान, हरमंद्र, भूराराम व हराराम थाने से करीब पौने 10 बजे रवाना होकर थाट फांटा पर पहुंचे। चूंकि मुखबिर इत्तला अवैध मादक पदार्थ के बारे मे मिली थी इसलिए एसएचओ साहब ने मौके से स्वतंत्र गवाहान की तलबी हेतु भूराराम कानि. को हुक्मनामा देकर भेजा व इसके बाद मुझे भी इलेक्ट्रॉनिक कांटा व अनुसंधान बॉक्स लाने भेजा, जिस पर मैं कुछ समय बाद उक्त सामग्री लेकर वापस मौके पर पहुंचा, तब तक भूराराम भी मेरे से पहले पहुंच चुका था, भूराराम अपने साथ दो स्वतंत्र गवाह राजवीरसिंह व सुशील को साथ लाया था। फिर उक्त दोनो गवाहान ने गवाह बनने की अपनी लिखित सहमति एसएचओ साहब को दी। फिर थाट फांटे से माफिक मुखबिर सूचना अनुसार 11.05 पी.एम पर एन.एच 89 पर स्थित अन्नपूर्णा होटल सरहद लांपोलाई पहुंचे, जहां इत्तलानुसार होटल के पीछे की साईड मे एक सफेद रंग का टाटा ट्रक सं. एम.एच 18 बी.जी 2289 खड़ा पाया गया, जिसके पास ही दो व्यक्ति क्रमशः एक चालक की

साईड में व दूसरा खलासी साईड में खड़ा था तथा एक व्यक्ति जाब्ले को देखकर झाड़ियों की तरफ पीछे की साईड अंधेरे का फायदा उठाकर भाग गया। उक्त दोनो व्यक्तियों में से चालक साईड की तरफ खड़े व्यक्तिय से उसका नाम-पता पूछा तो उसने अपना नाम घनश्याम व खलासी साईड वाले आदमी ने अपना नाम सुरेश बताया तथा सुरेश ने झाड़ियों में भागने वाले व्यक्ति का नाम भूराराम बताया। फिर उक्त ट्रक को पुर्व स्थित जगह से होटल के सामने की तरफ लेकर आये व चौकीदार से वहां लाईट चालू करवाई। फिर उक्त दोनो संदिग्धों ६ नश्याम व सुरेश, दोनो मौतबीरान व जाब्ले के सामने ट्रक के उपर ढके तिरपाल को रस्सी खोलकर हटाया तो ट्रक में पीछे की ओर प्याज के कट्टे भरे थे, जिनमें से पीछे से डाले की तरफ से प्याज के कट्टों को दो लाईनें हटाई तो उनके पीछे काले रंग के कट्टे दिखाई दिये, जो संख्या में 10 थे, वहां एक बोरी व एक सफेद प्लास्टिक का छोटा कट्टा था। तत्पश्चात् उक्त दोनो संदिग्धों घनश्याम व सुरेश को धारा 50 एनडीपीएस एक्ट का नोटिस दिया। उक्त कट्टों को ट्रक से नीचे उतारकर खोलकर चैक किया तो उनमें डोडा-पोस्त चूरा जैसा माल भरा था, जो अनुभव व परखने के आधार पर मादक पदार्थ डोडा-पोस्त चूरा होना पाया गया, जिस बाबत उक्त दोनों व्यक्ति घनश्याम व सुरेश से परिवहन करने का लाईसेंस व परमिट मांगा तो नहीं होना बताया। जिस पर एनडीपीएस एक्ट का अपराध पाये जाने पर बतौर वजह सबूत उक्त 12 नगों को कब्जा पुलिस लिया "

A bare perusal of testimony of **PW:5/Govindram** reflects that the **Seizure-office/PW/1** was although having prior information however, it is not clear as to whether any specific information was given by the accused persons to the effect that they were carrying the contraband in the Truck. Any information given to a Police-officer after detention/arrest of accused persons would be hit by mandate of section 25 & 26 of Evidence Act,1872 & may not be an admissible piece of evidence.

41. It is also not clear as to whether the Police team has any reasonable apprehension about the contraband being ferried in the Truck or the Police team tracing the vehicle saw the contraband kept in the car. Article 20(3) of the Constitution protects the right of self-incrimination which is available to an accused.
42. The testimony of **PW:6/kalander Khan** has deposed:-

“उस रोज मुखबिर इत्तला पर एसएचओ नरोत्तमसिंह के साथ, मैं, गोविंदराम, सुखाराम, तेजाराम, हरमेंद्र, भूराराम व हरिराम थाने से करीब 09.40 बजे रवाना होकर अन्नपूर्णा होटल, एन.एच 89, सरहद लांपोलाई पर पहुंचे। अवैध मादक पदार्थ के बारे में मुखबिर इत्तला मिली थी इसलिए एसएचओ साहब ने मौके से स्वतंत्र गवाहान की तलबी हेतु भूराराम कानि. को हुक्मनामा देकर भेजा व कानि. गोविंदराम को इलेक्ट्रॉनिक कांटा व अनुसंधान बॉक्स लाने भेजा, जिस पर गोविंदराम कुछ समय बाद उक्त सामग्री लेकर वापस मौके पर पहुंचा व भूराराम भी अपने साथ दो स्वतंत्र मौतबीरान राजवीरसिंह व सुशील को लेकर पहुंचा। फिर उक्त दोनो गवाहान ने गवाह बनने की अपनी लिखित सहमति एसएचओ साहब को दी। फिर मौके की कार्यवाही शुरू की। मौके पर उक्त अन्नपूर्ण होटल के पीछे की तरफ अंधेरे में एक टाटा ट्रक सं. एम.एच 18 बी.जी. 2289 खड़ा था, जिसमें ट्रक के अंदर तीन व्यक्ति बैठे थे, जिनमें से एक अंधेरे का फायदा उठाकर फरार हो गया, शेष बचे दो व्यक्तियों को जाब्ले ने पकड़ा, उनका नाम-पता पूछा तो उन्होंने अपना नाम घनश्याम व सुरेश बताया तथा भागने उक्त दोनो ने भागने वाले शख्स का नाम भूराराम बताया। फिर होटल वालों को बुलाकर तिरपाल उतरवाया, फिर कहा कि तिरपाल की कार्यवाही हमने की, होटल वालों को बुलाकर रोशनी/लाईटें करवाई। ट्रक में प्याज के कट्टे व मादक पदार्थ डोडा-पोस्त का चूरा कट्टों में भरा हुआ था, जब्ती की कार्यवाही प्रारंभ की गई। मौके की उक्त जाब्ले व उक्त स्वतंत्र मौतबीरान की उपस्थिति में की गई। ट्रक में पीछे की तरफ 260 कट्टे प्याज से भरे, 12 नग डोडा पोस्त चूरे के बरामद हुए, जिनमें से 10 काले रंग के प्लास्टिक के कट्टे व एक बोरी व एक सफेद रंग का प्लास्टिक कट्टा था। डोडा पोस्त के उक्त कट्टों का नाप-तोल किया तो कुल वजन 288 किलो 230 ग्राम हुआ, जिनमें से सैंपल व कंट्रोल सैंपल निकाले व मौके पर ही समस्त जब्तसुदा माल को सीलचेपा किया गया। आई.ओ द्वारा मौके पर मुलजिमान को एनडीपीएस एक्ट के प्रावधानों से अवगत करवा नोटिस आदि दिये गये व कार्यवाही की गई तथा उच्च अफसरान को सूचित कर संपूर्ण कार्यवाही की गई।”

43. The testimony of **PW:7/Hariram** has deposed:-

“फिर मौके पर उक्त अन्नपूर्णा होटल के साईड की तरफ अंधेरे की तरफ गये तो वहां एक टाटा ट्रक सं. एम.एच 18 बी.जी. 2289 खड़ा था, जिसमें ट्रक के अंदर तीन व्यक्ति बैठे थे, जिनमें से एक अंधेरे का फायदा उठाकर भाग गया, शेष बचे दो व्यक्तियों को पुलिस जाबते ने पकड़ा और उनका नाम-पता पूछा तो उन्होंने अपना नाम घनश्याम व सुरेश बताया तथा सुरेश ने भागने वाले शख्स का नाम भूराराम बताया। फिर होटल वालों को लाईट की व्यवस्था करने को कहा और उक्त ट्रक के उपर से तिरपाल उतारा तो देखा कि ट्रक में प्याज कटदे भरे हुए थे, जिनको गिना तो कुल 260 प्याज के कट्टे होने पाये गये, जिनके पास ही 10 काले रंग के कट्टे, एक बोरी व एक सफेद प्लास्टिक का कट्टा भी मि जिनको खोलकर चेक किया तो उक्त 12 नगों मे मादक पदार्थ डोडा चूरा जैसा होना पाया, जिसको जाबते ने अनुभव के आधार पर मादक पदार्थ डोडा पोस्त होना पाया, जिसके लाईसेंस / परमिट के बारे मे उक्त दोनो शख्स से पूछा तो न होना बताया, फिर उक्त अवैध मादक पदार्थ के सभी 12 नगों का कट्टों व ब सहित वजन किया तो कुल वजन 288 किलो 230 ग्राम हुआ”

44. The testimony of **PW:8/Tejaram** has deposed:-

“उस रोज थानाधिकारी पादुकलां श्री नरोत्तमसिंह को अवैध मादक पदार्थ के संबंध में मुखबिर इत्तला मिली थी. जिस पर उनके साथ थाने से मैं, गोविंदराम, कलंदर, सुखाराम, हरिराम, हरमंद्र, भूराराम समय करीब 09.44 पी.एम पर खाना होकर अन्नपूर्णा होटल, एन.एच 89, लांपोलाई गांव के पास पहुंचे। फिर एसएचओ ने हमराही जाबते को उक्त मुखबिर इत्तला से अवगत करवाते हुए कहा कि अवैध मादक पदार्थ के बारे में इत्तला मिली है, जिस पर कार्यवाही हेतु चलना है, फिर थानाधिकारी ने मौके से स्वतंत्र गवाहान की तलबी हेतु कानि. भूराराम को लिखित मे हुक्मनामा देकर भेजा व कानि. गोविंदराम को इलेक्ट्रॉनिक काटा व अनुसंधान बॉक्स लाने हेतु भेजा, जिस पर गोविंदराम कुछ समय बाद अपने साथ इलेक्ट्रॉनिक कांटा व उक्त सामग्री लेकर मौके पर पहुंचा व इसी बीच कानि. भूराराम भी अपने साथ दो स्वतंत्र मौतबीरान राजवीरसिंह व सुशील को लेकर पहुंचा। फिर एसएचओ ने उक्त दोनो गवाहान को लिखित में मौतबीर बनने हेतु नोटिस देकर उनसे मौतबीर बनने की लिखित सहमति प्राप्त की। फिर उक्त अन्नपूर्णा होटल की तरफ गये तो वहां होटल के पीछे के तरफ अंधेरे में एक टाटा ट्रक सं. एम.एच 18 बी.जी. 2289 खड़ा मिला, जिसमें ट्रक के अंदर तीन व्यक्ति बैठे थे, जिनमें से एक अंधेरे का फायदा

उठाकर मौके से भाग गया, फिर शेष बचे दो व्यक्तियों को पुलिस जाबते ने पकड़ा और उनका नाम-पता पूछा तो चालक सीट पर बैठे व्यक्ति ने अपना नाम घनश्याम व पास में ही खलासी साईड में बैठे व्यक्ति ने अपना नाम सुरेश बताया व भागने वाले शख्स का नाम भूराराम होना बताया। फिर अंधेरा होने से लाईट की व्यवस्था हेतु होटल वालों को कहा, जिन्होंने लाईट की व्यवस्था की। फिर उक्त ट्रक को उक्त स्थान से लाईट की रोशनी की तरफ लेकर गये जहां ट्रक के उपर से तिरपाल उतारा तो देखा कि ट्रक में प्याज के कटट्टे मरे हुए थे. जिनको गिनती की तो कुल 260 प्याज के कट्टे होने पाये गये, जिनके नीचे 10 काले रंग के कट्टे, एक बोरी व एक सफेद प्लास्टिक का कट्टा भी मिला, जिन्हें खोलकर चेक किया तो उक्त सभी 12 नगों में मादक पदार्थ डोडा चूरा जैसा होना पाया, जिसको जाबते ने अनुभव के आधार पर मादक पदार्थ डोडा पोस्त चूरा होना जाहिर किया, जिनके लाईसेंस/परमिट के बारे में उक्त दोनो व्यक्तियों घनश्याम व सुरेश से पूछा तो उन्होंने नही होना बताया, फिर उक्त अवैध मादक पदार्थ से भरे सभी 12 नगों का कट्टों व बोरी सहित वजन किया तो कुल वजन 288 किलो 230 ग्राम हुआ. जिन सभी में से प्रत्येक में से 500-500 ग्राम के दो सैंपल रासायनिक व नमूना निकाले जाकर कपडे की थैली में डालकर सीलबंद कर मार्क अंकित किये, शेष बचे माल को भी सीलबंद कर मार्क अंकित किया। मौके पर ही उक्त दोनो मुलजिमान को गिरफ्तार किया व फर्द जब्ती मूर्तिब की,"

45. The testimony of **PW:10/Bhuraram** has deposed:-

‘मैं दिनांक 03.07.2020 को पीएस पादुकलां में कानि. के पद पर तैनात था। उस रोज मुखबिर इत्तला पर थानेसे एसएचओ श्री नरोत्तमसिंह के साथ मय जाबता मैं, सुखाराम, तेजाराम हेड कानि, कलंदर खान कानि, हरमेंद्र, गोविंदराम, हरिराम के थाने से रात्रि करीब पौने 10 बजे खाना होकर थाट फांटा पर पहुंचे। एसएचओ को मुखबिर इत्तला अवैध मादक पदार्थ के बारे में मिली थी इसलिए एसएचओ साहब ने स्वतंत्र गवाहान की तलबी हेतु मुझे लिखित में हुक्मनामा देकर भेजा तथा गोविंदराम कानि. को इलेक्ट्रॉनिक कांटा व अनुसंधान बॉक्स लाने भेजा, मुझे दिया गया उक्त हुक्मनामा प्रदर्श पी 3 है. जिस पर सी से डी मेरा लिखित जवाब व ई से एफ मेरे हस्ताक्षर है, जिस पर मैंने वहां आसपास मौतबीरान की तलाश की व कुछ देर बाद अपने साथ दो स्वतंत्र गवाहान राजवीरसिंह उर्फ नीलू बन्ना व सुशील को

साथ लेकर पुनः मौके पर पहुंचा, इतने में ही गोविंदराम भी कांटा व उक्त सामग्री लेकर वापस मौके पर पहुंचा। फिर एसएचओ को उक्त दोनो गवाहान ने गवाह बनने की अपनी लिखित सहमति प्रदान की। तत्पश्चात् थाट फांटे से खाना होकर माफिक इत्तला 11.05 पी.एम पर एन.एच 89 पर स्थित अन्नपूर्णा होटल सरहद लांपोलाई पहुंचे, जहां इत्तलानुसार होटल के पीछे की साईड में एक सफेद रंग का टाटा ट्रक सं. एम.एच 18 बी.जी 2289 खड़ा पाया गया, जिसके पास ही तीन व्यक्ति कमशः एक चालक की साईड मे व दो व्यक्ति खलासी साईड में खड़े थे, जिसमें से खलासी साईड का एक व्यक्ति जाबते को देखकर झाड़ियों की तरफ पीछे की साईड में अंधेरे के फायदा उठाकर भाग गया, फिर शेष बचे व्यक्तियों से एसएचओ ने नाम-पता पूछा तो उन्होंने अपना नाम घनश्याम व सुरेश होना बताया तथा झाड़ियों में भागने वाले व्यक्ति का नाम भूराराम बताया। फिर उक्त दोनो व्यक्तियों को एसएचओ ने मुखबिर इत्तला से अवगत करवाया व उक्त ट्रक को होटल के सामने साईड की तरफ लेकर आये व होटल कर्मचारी से वहां लाईट की व्यवस्था करवाई। फिर उक्त दोनो घनश्याम व सुरेश, दोनो मौतबीरान व जाते के सामने ट्रक के उपर बके तिरपाल की रस्सी खोलकर हटाया तो ट्रक में पीछे की और प्याज के कट्टे भरे थे, जिनमें से पीछे से डाले की तरफ से प्याज के कट्टों की दो लाईनें हटाई तो उनके पीछे काले रंग के 10 बड़े कट्टे दिखाई दिये, वहां पास में ही एक बोरी व एक सफेद प्लास्टिक का छोटा कट्टा कुल 12 नग थे, उक्त सभी को ट्रक से नीचे उतारा व खोलकर चेक किया तो उनमें डोडा पोस्त चूरा जैसा पदार्थ भरा हुआ दिखाई दिया, जिसको एसएचओ, उपस्थित जाबते व मौतबीरान ने देखा, सूघा. परखा तो मादक पदार्थ डोडा पोस्त चूरा होना पाया गया, जिसको अपने कब्जे में रखने व परिवहन बाबत् लाईसेंस/परमिट का उक्त दोनों व्यक्तियों घनश्याम व सुरेश से पूछा तो नहीं होना बताया, जिस पर उक्त लोगों का कृत्य एनडीपीएस एक्ट का अपराध पाये जाने पर मादक पदार्थ डोडा पोस्त चूरे से भरे उक्त 12 नगों को कब्जा पुलिस लिया जाकर इलेक्ट्रॉनिक कांटे से उनका कट्टों / बोरी सहित वजन किया तो कुल वजन 288 किलोग्राम 230 ग्राम हुआ, जिन सभी में से 500-500 ग्राम के दो सैंपल नमूना व कंट्रोल निकाले जाकर सीलबंद कर मार्क अंकित किये गये व उक्त मादक पदार्थ के अलावा ट्रक में 260 जालीदार प्लास्टिक के कट्टों में प्याज भरे हुए थे, जिनको वापस उक्त ट्रक में रखवाया गया व उक्त समस्त मादक पदार्थ मय सैपल, प्याज के कट्टों व अवैध मादक पदार्थ के परिवहन में प्रयुक्त उक्त टाटा ट्रक की मौके पर ही फर्द जब्ती मूर्तिब की,

जो प्रदर्श पी 7 है, जिस पर ओ से पी मेरे हस्ताक्षर है। मौके पर ही उक्त दोनो मुलजिमान को गिरफ्तार किया, मुलजिम सुरेश की फर्द गिरफ्तारी प्रदर्श पी 11 है, जिस पर आई से जे मेरे हस्ताक्षर है। मौके पर ही कार्यवाही में प्रयुक्त सील की फर्द नमूना सील मूर्तिब की व बाद कार्यवाही सील को नष्ट कर फर्य नष्टीकरण बनाई।”

46. This court on cumulative perusal of records do not find any specific violation of mandate of section 42(1) or (2) of NDPS Act,1985.
47. The testimony of **seizure-officer/PW:1 with other members of seizure team i.e. PW:2/Rajuram, PW:5/Govindram & PW:6/Kalender Khan, PW:7/Hariram, PW:8/Tejaram & PW:10/ Bhuraram** have fully supported the case of prosecution in backdrop of **Ex:P-1/Source Information,Ex:P-2/Rojnamcha Entry of Source Information & forwarding of source information to superior/Ex:P-26 and Rojanamcha reports/Ex:P-32 & Ex:P-33** shows that mandate of section 42 of NDPS Act has been duly complied with by the State. Hence this court finds ‘substantial-compliance’ of mandate of section 42 of NDPS Act,1985 in the light of judgment of Hon’ble Supreme court in **Sukhdev Singh Vs. State of Haryana AIR 2013 SC 953 & Dalel Singh Vs. State of Haryana RCR 119 SC 2010(1)**.

**Violation of mandate of section 55 of NDPS Act,1985:-**

48. In this case there report of re-seal by the **seizure-officer/PW:1** after coming back to police station vide Ex:P-14. There is not even an iota of evidence on record to sustain the non-compliance of section 55 of NDPS Act,1985. **Even if a particular provision is held to be directory even than the overall effect of the lapses on the part of SHO/seizure-officer in effecting recovery under the Special Act like NDPS Act cannot be considered leniently and it does erodes the case of Prosecution.** However, mere non ‘stand-alone’ violation of section 55 of NDPS Act,1985 cannot be said to be ‘per-se’ sufficient to grant acquittal by any court of law.

**Detailed information to superior-officer u/s. 57 NDPS Act:-**

49. That **PW:2/Ct.Rajuram** has deposed in his chief-examination has deposed qua carrier of section 57 NDPS Act information to superior vide **Ex:P-27 & Rojnamcha entries/Ex:P-30 & Ex:P-31** and there is no specific cross of this witness by the Defense.

In **Gurbux Singh Vs. State of Haryana** AIR 2001 SC 1002 the **Hon'ble Supreme Court** has categorically held that section 52, 55 & 57 of NDPS Act 1985 is only directory and its non-compliance; in any case would not 'ipso-facto' result into vitiating the trial or the conviction. In this case, this Court finds no infraction of mandate of section 52 & 57 of the NDPS Act.

**Difference in weight of contraband at the time of Inventory:-**

50. The Ld.counsel for Defense submits that weight of contraband is incorrect in inventory report as one bag was missing out of 12 bags. To this plea it is noteworthy that even if prosecution has proved 11 bags of drugs – doda-chura out of 12 bags than still the quantity of drugs found in illegal possession of accused persons would fall under the commercial quantity.

51. In any event there is substantial compliance of mandate of section 52-A of NDPS Act,1985 in this case and minor discrepancy thereof would not vitiate the trial in view of judgment of Hon'ble Supreme Court in **Bharat Aambale Vs. The State of Chhattisgarh**, [2025] 1 S.C.R. 1524.

**Call detail records of accused persons as link evidence**

52. In this case, the accused/Ghanshyam has made telephonic contact through his Mobile no: 7991050550 with Ramniwas at his Mobil no.7014173806 on 1.7.2020 & 2.7.2020 as per CDR/Ex:P-36 to Ex:P-38 just a day before the date of occurrence on 3.7.2020. As regards this, **PW:12/Ruparam** has deposed that the accused persons were in touch with each other just before the date of offence. However, there is Customer Application form[CAF] ID of accused/Ramniwas with certificate u/s. 65-B of Evidence Act in support of the call detail records. Thus, privity between the accused persons 'inter-se' is apparent from the record as supplier & receiver of drug.

However, mere half-baked CDR may not be sufficient to infer conspiracy as there is nothing on record in shape of any disclosure statement or recovery made thereof by IO and mere interrogation note of accused person cannot form the basis to convict the accused u/s. 29 of NDPS Act, 1985.

There is also no evidence of any of the witnesses or even IO supporting the basis for filing of charge-sheet against the co-accused/Ramniwas save & except the interrogatory statements of accused persons which is 'per-se' not admissible in evidence in view of judgment of **Toofan Singh Vs. State of Tamilnadu** AIR 2020 SC 5592.

**'Self-same' condition of seized contraband from date of seizure till FSL**

53. This court may take note of the fact that the contraband was seized by **Seizure officer/PW:1** on 3.7.2020 and the samples were drawn by the SHO/Seizure-officer on the spot and it was sent to FSL through **Ct/Chandanram/PW:9** by SHO vide forwarding letter Ex:P-19 dated 13.7.2020 followed by another forwarding by SP office vide Ex:P-20 dated 13.7.2020 and FSL receipt/EX:P-21 dated 14.7.2020 and the entry in **Malkhana-Register/Ex:P-24/1** coupled with testimony of **PW:11/Ramjiwan/Malkhana-in-charge** reflects the same position.

Thus, the self same condition of the seized contraband from the date of seizure till deposit of samples of the same is proved on record.

**‘Conscious possession’ of contraband & culpable mental state:-**

54. Coming to the context of Section 15 of the NDPS Act, it would have a reference to the concept of “conscious-possession”. Admittedly, section 35 of NDPS Act raises a presumption as to knowledge and culpable mental state from the possession of illicit articles. The expression “possess or possessed” is often used in connection with statutory offences of being in possession of prohibited drugs and contraband substances. Conscious or mental state of possession is necessary and that is the reason for enacting Section 35 of the NDPS Act. In *Noor Aga v. State of Punjab and Anr*: (2008) 16 SCC 417, the Hon’ble Supreme Court noted broad contours of Section 35 & 54 of the NDPS Act & dealt with the constitutional validity of Section 35 and 54 of the NDPS Act, & ruled at para 58 that:-

“An initial burden exists upon the prosecution and only when it stands satisfied, would the legal burden shift. Even then, the standard of proof required for the accused to prove his innocence is not as high as that of the prosecution. Whereas the standard of proof required to prove the guilt of the accused on the prosecution is “beyond all reasonable doubt” but it is “preponderance of probability” on the accused..”

55. The **IO/PW:12/Ruparam** had testified on very many aspects of the investigation done by him as under:-

“उस रोज प्र.सं. 122/2020, अंतर्गत धारा 8/15 एनडीपीएस एक्ट की पत्रावली वास्ते अनुसंधान मुझे प्राप्त हुई, जिस पर मेरे द्वारा पत्रावली का अवलोकन कर अनुसंधान प्रारंभ किया गया, दौराने अनुसंधान प्रकरण के गवाहान नरोत्तमसिंह, तेजाराम, भूराराम, गोविंदराम,

राजुराम, कलंदर खान, सुखाराम के बयान उनके कथनानुसार लेखबद्ध किये गये। तत्पश्चात् दिनांक 05.07.2020 को जब्तीकर्ता श्री नरोत्तमसिंह की निशादेही से जब्तीस्थल का निरीक्षण कर फर्द नक्शा मौका मय हालात मौका मूर्तिब किया, जो प्रदर्श पी 22 है, जिस पर सी से डी मेरे, ए से बी नरोत्तमसिंह व ई से एफ गवाह के हस्ताक्षर है। इस दौरान मेरा स्थानांतरण अन्यत्र हो जाने से प्रकरण की पत्रावली वास्ते अग्रिम अनुसंधान नव पदस्थापित थानाधिकारी श्री राजपाल सिंह को सुपूर्द की थी।”

That based on this investigation, a charge-sheet was filed by **PW:12/Ruparam** in this court.

56. This Court is alive to the settled position that **“Once possession is established the Court can presume that the accused had culpable mental state and have committed the offence.”** In somewhat similar facts the Hon’ble Supreme Court had the occasion to consider this question in **Madan Lal v. State of H.P (2003) 7 SCC 465**, wherein it has been held that “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 statutory recognition of this position because of the presumption available in law.”
57. In the factual scenario of the present case, not only 'possession' but 'conscious-possession' of 'Doda-chura' has been established. It has not been shown by the accused that the possession was not conscious in the logical background of Sections 35 and 54 of the Act. Since in this case, the recovery has admittedly been made from conscious-possession of accused in a public place & the **seizure report** was prepared in presence of independent witnesses and 'Doda-chura' **weighting 288 kilogram & 230 grams** was seized from 12 bags, samples of 500 grams each were taken for specimen & control sample and wrapped into

cloth bags and specimen seal was put on it. This report is also signed by accused persons.

58. **Thus, presumption of “culpable mental state” as envisaged u/s. 35 of the Act stands clearly attracted in absence of any rebuttal by the Defense.**

59. Thus, this Court is of view that in the light of judgment of Hon’ble Supreme Court in **Ram Singh Vs. CBN 2011** Cr.L.R. [SC] 594; **Megh Singh Vs. State of Punjab** AIR 2003 SC 3184; the recovery of contraband is made from conscious possession.

#### **FINDINGS**

60. That in view of cumulative, thoughtful & due perusal of the various facets of the case record, the chain of entire link evidence, oral, expert & documentary evidence on record, the crux of findings are that Prosecution/state have fully established the requisite substantial compliance of NDPS Act,1985.

61. Thus, the accused persons viz: **[1] Ghanshyam** S/o:Durgaram Age:34 years R/o:Bag ki dhani, Bilara PS: Bilara District:Jodhpur [Rajasthan], **[2] Suresh** S/o: Hanmatram Aged: 30 years, R/o:Sunaron ka mohalla Gurjaron ki dhani Butati PS: Kuchera, District:Nagaur [Rajasthan] are hereby convicted on charges of illegal possession of ‘Doda-chura’ of 288 kilograms & 230 grams without any license & as punishable u/s. 8/15 of NDPS Act,1985. Both the accused persons be taken into custody for hearing on sentence.

62. However, the **accused/Ramniwas** S/o:Dhannaram Aged:32years, R/o:Indas, PS:Sadar,District:Nagaur [Rajasthan] stands acquitted from all charges u/s. 29 of NDPS Act,1985 as mere interrogation note of main accused cannot form the basis to convict the co-accused u/s. 29 thereof in the light of judgment of **Toofan Singh Vs. State of Tamilnadu** AIR 2020 SC 5592.

(Arun K Beriwal)

### HEARING ON SENTENCE

63. **Heard on sentence.** Ld. Counsel for Defense/Accused-persons submits that the incident is of the year 2020. Accused-persons are young and have dependant family members to be looked after & they are stated to be first time offenders and thus, awarding maximum punishment would disturb his family life. Per contra Ld. State counsel insists on maximum term as it is a case of commercial quantity.
64. This Court is under solemn duty to award suitable, appropriate & just punishment which must be commensurate with the gravity & propensity of offence proved against the accused-persons. 'Sentencing' justice postulates that it must be befitting the crime committed by accused-persons as it is a serious blow & an affront to the society at large. In this case, the contraband '**Doda-chura**' weighting **288 Kilograms & 230 grams** is of '**commercial-quantity**' as per section 15(c) of NDPS Act,1985 & thus, it is an offence punishable with a minimum sentence of RI for 10 years which may extend upto 20 years and a minimum fine of Rs. 1 lakh which may extent to Rupees 2 lakh each accused person.

### ORDER ON SENTENCE

65. Keeping in view the above parameters in mind like age, antecedents & dependents family members & conduct of accused-persons and by balancing the scales of justice evenly also qua sentencing part, this Court is of considered view that ends of justice would be fully met, if the **accused-persons viz: Ghanshyam** S/o:Durgaram Age:34 years R/o:Bag ki dhani, Bilara PS: Bilara District:Jodhpur [Rajasthan] & **Suresh** S/o: Hanmatram Aged: 30 years, R/o:Sunaron ka mohalla Gurjaron ki dhani Butati PS: Kuchera, District:Nagaur [Rajasthan] be sentenced **on their conviction for offence u/s.8/15(c) of NDPS Act,1985** in Session case no: 3/2021 accused persons be sentenced to **R.I. for 14 Years each with fine of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand Only) each.**

In default of payment of fine amount, the respective accused persons i.e. **Ghanshyam & Suresh** shall face default-sentence of S.I. for 3 years each which shall run consecutively.

Benefit of section 428 of Cr.P.C be granted to both accused persons.

66. **Jail warrants be prepared by office accordingly endorsing the factum of remaining sentence to be suffered by each accused.**
67. The bail bonds of **accused persons-Ghanshyam & Suresh** stands canceled in view of their conviction & they be taken into custody to serve their remaining sentence. The **Co-accused/Ramniwas** stands acquitted of charge u/s. 29 of NDPS Act,1985 and his bail bonds are cancelled.
68. Thus, **Co-accused/Ramniwas is directed to furnish a personal bond of Rs. 2 Lakhs with one surety of Rs. 1 Lakh bounding himself down for a period of 6 months u/s. 437-A Cr.P.C that in case of an appeal against his acquittal by State he will cause appearance in person or through his counsel before Hon'ble Rajasthan High Court on receipt of notice thereof.**
69. The seized contraband had already been disposed off in accordance with NDPS Rules & General rules (Criminal & Civil) 2018 by the Drug Disposal Committee.
70. File of the session case be consigned to records.
71. Copy of judgment be given to accused persons free of cost.
72. Pronounced in open Court on 30.3.2026 & typed by me.

(Arun K Beriwal)