

Special Judge (N.D.P.S. Act)/Additional Sessions Court**Court No.-03, District-Pilibhit**

Presiding Officer : Mahesha Nand Jha, H.J.S.

J.O. Code-UP6289

Special Sessions Trial No.-1578/2023

UPPB010081222023



Presented on : 15-12-2023
 Registered on : 15-12-2023
 Decided on : 10-03-2026
 Duration : 2 years, 2 months, 26 days

State of U.P......**vs.**.....**Akeel.**

Case Crime No.-169/2023U/S-08/20 NDPS ActP/S-Diyuriya Kalan, District -Pilibhit

Complainant:-	State of UP through SI Ramveer Singh
Complainant is Represented by:-	ADGJ (crl.) Shri Sanjay Pandey
Accused :-	Akeel s/o-Sampurna Singh @ Nati, r/o-Vill. Mirpur Ratanpur Jhala, p/s-Diyuriya Kalan, District Pilibhit.
Accused persons are Represented by:-	Adv. Upendra Kumar Mishra

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Date-sheet of the Case

Sr.No.	Date	Important Events
1.	19.07.2023	Commission of Offence
2.	19.07.2023	Institution of FIR
3.	11.09.2023	Submission of Charge-sheet
4..	25.06.2024	Framing of Charges
5.	30.11.2024	Commencement of Prosecution Evidence
6.	19.09.2025	Conclusion of Prosecution Evidence
7.	07.11.2025	Statement u/s 313 Cr.P.C Recorded
8.	26.02.2026	Judgment Reserved after Argument
9.	07.03.2026	Pronouncement of Judgment
10.	10.03.2026	Pronouncement of Sentence

J U D G M E N T

(1) Prefatory:-The instant matter commenced with the filing of the charge-sheet by the investigating officer of p/s-Diyuriya Kalan, District-Pilibhit against the accused Akeel s/o-Sampurna Singh @ Nati, r/o-Vill-Mirpur Ratanpur (Jhala), p/s-Diyuriya Kalan, District-Pilibhit, in Case Crime No-169/2023, u/s.-08/20 Narcotic Drugs And Psychotropic Substance Act, 1985 (hereinafter referred to as NDPS Act), p/s-Diyuriya Kalan, District-Pilibhit. Finding that offence has *prima facie* been committed by the accused, cognizance was taken by the Court and therefore, the accused is being tried by this Court.

(2) Brief Concatenation of Facts:- The thumbnail sketch of the prosecution story, so far as relevant for the purpose of judgment is that, FIR was instituted on 19.07.2023 at 11.00 by S.I. Shri Ramveer Singh in p/s-Diyuriya Kalan. The FIR version, in brief, is that:-

(i) That, on 19.07.2023 complainant Ramveer Singh along with head constable Gyan Chandra, constable Vipin Kumar, constable Amit Saini and constable Sahdev Singh left the police station by government vehicle bearing registration no-UP26G 0399 at 06.10 for patrolling duty, search of warranted accused persons and prevention of crime. When the police party reached to near the temple at village Meerpur, Ratanpur and were talking to each other, a police informer came there and informed that Akeel s/o-Sampurna Singh @ Nati and Satnam Singh s/o-Veer Singh, both r/o-Vill. Meerpur Ratanpur are waiting under a Pakad tree near canal bridge at village Rampur. They are waiting for someone. Akeel is having contraband Charas and country made gun with him whereas Satnam is having country made gun with him.

(ii) That, if the police party will make it fast, they can be arrested. Believing upon the information the complainant thought that for the purpose of recovery of contraband narcotic substance it is essential that the accused persons should be searched before any gazetted officer or a Magistrate, he contacted Circle Officer on phone and informed him about impending search of accused persons and recovery of narcotic substance.

(iii) That, the Circle Officer asked him to wait there. Within 30 minutes Circle Officer Bisalpur came there. Thereafter, the police party conducted inter se searches of each other to ensure that no one is having any objectionable substance with him. Thereafter, they left towards the place of occurrence along with Circle Officer, Bisalpur as per his directions. When the police party was about 100 steps before Raipur-Fazilpur canal bridge, the police informer asked it to stop the vehicle and indicated towards the accused persons who were under a Pakad tree. Thereafter, the police informer left the place of occurrence.

(iv) That, under the directions of circle officer the police party raided the places at or about 08.05 and nabbed both the accused persons. Satnam Singh informed the police party that he is having illegal country made gun with him whereas the accused Akeel said that he is having contraband Charas with him along with illegal country made gun.

(v) That, Akeel was informed that he has legal right of personal search before any gazetted officer. Gazetted Officer, Circle Officer Bisalpur is present with them and the personal search of accused Akeel was conducted in presence of Circle Officer and a consent memo was drawn up. The accused said that his name is Akeel s/o-Sampurna Singh @ Nati. During his personal search a black polythene was recovered from the right side pocket of his trousers. When the police party smelt it, it was found to be Charas.

(vi) That, from the left side pocket of the accused an illegal country made gun 315 bore was recovered which was in working condition. Two live cartridges were also recovered from his pocket. The recovered country made gun and cartridges were wrapped in a white cloth on the spot. When the Charas was weighed from the electronic weighing machine present in the investigation kit, it came out to be 150 gm. 30 gm sample was separated on the spot. Both the substances were wrapped in white cloths and sealed on the spot.

(vii) That, the another person arrested informed the police party that his name is Satnam Singh. During his personal search a country made gun, 315 bore was recovered which was inserted in the left side of his pants. Two live cartridges were also recovered from the right side

pocket. The country made gun and cartridges were wrapped in white cloth and sealed on the spot. When the accused persons were asked about the narcotic substance and country made gun, they kept silence.

(viii) That, the police party tried to ensure presence of public witnesses but no one came forward to become witness. Accused Akeel was formally taken into custody u/s-8/20 NDPS Act and u/s-3/25 Arms Act. Whereas accused Satnam was taken into custody u/s-3/25 Arms Act. Recovered materials were taken into custody. Recovery memo and arrest memos were prepared by head constable Gyan Chandra on dictation of complainant. Signatures of police personnel and accused persons were obtained on the recovery memo and a carbon copy of the same was handed over to the accused Akeel.

(ix) That, as the accused persons Akeel was arrested suddenly, a report u/s-42 of the Act would be drawn up and sent to Superintendent of Police. On the basis of this recovery memo the instant case was registered against the accused persons.

(3) Of the Investigation:-In this case, the investigation was carried out by the PW5 S.I. Rajendra Singh, on the basis of recovery memo, Chik F.I.R. was prepared and an entry to this effect was made in G.D. The matter was registered and investigation was carried out. During the course of investigation the Investigating Officer prepared sketch of place of occurrence, recorded depositions of prosecution witnesses u/s-161 Cr.P.C. After completion of the investigation, finding sufficient evidence against the accused, charge-sheet u/s-8/20 of the Act was submitted against the accused Akeel, s/o-Sampurna Singh @ Nati, r/o-Vill-Mirpur Ratanpur Jhala, p/s-Diyuria Kalan, District Pilibhit.

(4) Of the Charge:-After explaining all the incriminating circumstances to the accused Akeel, charge was framed against him u/s.-08/20 Narcotic Drugs And Psychotropic Substance Act, 1985 (NDPS Act), on 25.06.2024 by the then Presiding Officer of this court. The charge was read out and explained to the accused. The accused denied all the incriminating charge levelled against him, pleaded not guilty and claimed to be tried judicially.

(5) Of the Prosecution Evidence:- In order to substantiate its case and to prove the guilt of the accused, the prosecution in support of its version, examined as many as 06 witnesses:-

Rank	Name of witness	Nature of evidence	Brief description
PW1	SI Ramveer Singh	Eye-witness	He is the complainant and eye-witness of the incident.
PW2	Constable Sumit Kumar	Formal Witness	He had registered the FIR and proved it as Ex. A9.
PW3	HC Gyan Chandra	Formal Witness	He has supported the prosecution narrative.
PW4	SI Rajendra Singh	Investigating Officer	He has carried out the investigation and submitted charge-sheet after investigation.
PW5	CO Satish Chandra Shukla	Investigating Officer	He is the Circle Officer before whom personal search of the accused was carried out.
PW6	HC Harnaryan	Formal Witness	He has carried the docket to FSL for chemical examination.

(6) Of the Documentary Evidence:- To bring home the charges levelled against the accused, the prosecution has brought on the record and proved the following documentary evidences:-

S.No.	Exhibit No.	Description	Proved by
1	Ex. A-1	GD of Departure	PW-1
2	Ex. A-2	Consent Memo	PW-1
3	Ex. A-3	Memo of Recovery	PW-1
4	Ex. A-4	Information to SP u/s-42 of NDPS Act	PW-1
5	Ex. A-5	Information u/s-57	PW-1
6	Ex. A-6	Arrest Memo	PW-1
7	Ex. A-7	Memo of Information	PW-1
8	Ex. A-8	Description of case on contraband material	PW-1
9	Mat. Ex. 1	Packet of contraband material	PW-1
10	Mat. Ex. 2	Black Polythene	PW-1
11	Mat.Ex.-3	Contraband Charas	PW-1
12	Ex. A-9	Chick FIR	PW-2
13	Ex.-A10	Copy of GD	PW-2
14	Ex.-A11	Site Map	PW-4

15	Ex.-A12	Charge-sheet	PW-4
16	Ex.-A13	FSL Report	PW-4
17	Ex.-A14	Receipt of Submission of Docket	PW-6

(7) Of The Statement u/s 313 Cr.P.C.:- After examination of prosecution witnesses the statement of accused u/s-313 Cr.P.C. was recorded explaining all the incriminating evidence in which he has denied the prosecution version and stated that false recovery of contraband narcotics has been shown from him by the police party and false case has been instituted against him. He has further stated that no recovery has been made from him. He was arrested from home and taken to police station and he has been implicated in this false case on the basis of false recovery. He has sought opportunity to adduce defence evidence.

(8) Heard the arguments of the Id. ADGC (Criminal) Shri Sanjay Pandey and the Id. defence counsel Adv. Upendra Kumar Mishra and carefully sauntered through the oral and documentary evidences on record.

(9) Submissions on behalf of the prosecution:- The Id. ADGC (Criminal) has argued that the prosecution witnesses of fact, viz. PW-1 Complainant Ramveer Singh and PW-3 Head Constable Gyan Chandra and PW5 Satish Chandra Shukla have fully supported the prosecution version and have proved the prosecution papers. The recovery of contraband materials from the accused has also been proved. The FSL report has also confirmed that the contraband material was Charas. The accused was not having any valid licence or authority to possess the contraband material, therefore, the accused is liable to be convicted u/s.- 08/20 N.D.P.S. Act.

(10) Submissions on behalf of the defence:- Per contra, the Id. defence counsel for the accused is innocent and has been falsely framed in this case. Inter alia, he has advanced the following arguments:-

- I. The arresting police party has not complied with the provisions of section 50 of the Act which necessitates personal search of the accused before a gazetted officer or Magistrate. However, from the perusal of FIR it is apparent that the accused has been given only the option of search before gazetted officer. PW5 Satish Chandra

Shukla, gazetted officer before whom recovery has been shown, has acted not as an independent witness of recovery but as a prosecution witness of fact, hence, his deposition is tainted by due to official bias. In place of calling the gazetted officer to the place of occurrence, the accused should have been taken to either gazetted officer or a Magistrate for his personal search. Hence, compliance of section 50 has not been properly been done.

II. The incident has allegedly taken place in such a place where independent public witness could easily be found. The police party has not tried to secure any public witnesses. The raiding party has also not associated two respectable persons of the area with the recovery process therefore, the entire proceeding of recovery contraband material becomes highly suspicious.

III. The accused has been wrongly framed by the police. He was lifted from his home and falsely implicated in the instant matter on the basis of false recovery.

IV. Investigation of the matter was carried out by the police officer who was posted in the same police station and hence the investigation cannot said to be free and independent. The investigating officer has not made any GD entry regarding sending the docket for chemical analysis.

V. The sample for chemical analysis has been sent to FSL after a delay of about two months on 11.09.2023 and no plausible reason has been assigned for the same.

VI. The provisions of Sections 42(2), 52A, 55 and 57 of the Act have not been complied with. Therefore, the accused is liable to be acquitted.

(11) The fundamental principle of criminal liability:- The cardinal principle of criminal liability is that the accused is presumed to be innocent unless and until he is proved guilty beyond the reasonable doubts. The *onus probandi* that the alleged crime has been committed by the accused lies on the shoulders of the prosecution. The prosecution is required to prove the guilt of the accused beyond all reasonable doubts.

- (12) Points for determination:- The *factum proabandum* which crops up for determination in the instant case is as to whether on 19.07.2023 at or about 08.05 am 150 gm Charas was recovered by the raiding police party from right side pocket of his pants on the road near village-Raipur, Fazilpur near the bridge of canal, p/s-Diyuriya Kalan, District-Pilibhit regarding which the accused was having no license or authority to possess.?

Findings and reasons thereof

- (13) Of the Analytic of Depositions of Witnesses of Fact:- The basic and foremost question which springs up for consideration is as to whether on 19.07.2023 at or about 08.05 am 150 gm Charas was recovered by the raiding police party from right side pocket of his pants on the road near village-Raipur, Fazilpur near the bridge of canal, p/s-Diyuriya Kalan, District-Pilibhit regarding which the accused was having no license or authority to possess. The most important witness of the case **PW-1 complainant Ramveer Singh**, while supporting the prosecution story has said in his deposition dt. 30.11.2024 stated that on 19.07.2023 he was posted as senior sub-inspector at p/s-Diyuriya Kalan. On that day at or about 06.10 he had left the police station after making GD entry no-10 along with head constable Gyan Chandra, Vipin Kumar, Constables Ankit and Hardev by government vehicle for the purpose of patrolling and maintenance of law and order. When the police personnel were talking with each other near a temple at Mirpur, Ratanpur, a police informer came there and informed them that accused persons Akeel and Satnam are waiting for someone and they are having contraband Charas and illegal country made gun and if the police party will hurry up they can be arrested. After this the complainant made phone call to Circle Officer and requested him to reach to the place of occurrence. After this they made inter se searches of each other to ensure that no one is having any objectionable thing with him and thereafter, they left to the place of occurrence along with police informer. When the Police party reached near Fazilpur canal, the informer indicated towards the accused persons and left the place of occurrence. Thereafter, the police party raided the place at 08.05 am and nabbed both of them. On being enquired, the

accused Akeel said that he is having a country made gun and Charas with him whereas the accused Satnam said that he is having country made gun with him. After this the complainant informed the accused persons that they have a legal right of personal search before a Circle Officer/Magistrate. The accused persons expressed the desire of search before gazetted officer whereupon a consent memo was drawn up. The witness has proved the departure GD as Ex. A4. The consent memo which in the writing of this witness has been proved as Ex. A2. During the course of personal search of the accused contraband Charas was recovered from the right side pocket of his pants which was wrapped in black polythene. One country made gun and two cartridges were also recovered. The recovered Charas weighed about 150 gm out of which 30 gm sample was taken out. Recovered Charas, sample, cartridges and guns were sealed separately. During the personal search of accused Satnam a country made gun was recovered which was sealed separately. When the accused persons were asked to show the licence for possession of Charas and gun, they failed to do so. Members of public were asked to become witness but no one was willing. The recovery memo was prepared by constable Gyan Chandra on his dictation. The recovery memo has been proved as Ex. A3. As the arrest of accused persons had taken place in consequence of information received from police informer, a written information was sent to Superintendent of Police u/s-42 of the Act which has been proved as Ex. A4. Information u/s-57 of the Act has been proved as Ex. A5. The arrest memo and information memo prepared by this witness have been proved as Ex. A6 and Ex. A7. The accused persons are habitual offenders. The covering cloth of the recovered contraband material has been proved as Ex. A8. The sample seal has been proved as mat. ex. 1, black polythene as mat. ex. A2 and recovered Charas and mat. ex. A3. In this way the complainant has fully supported the prosecution story.

- (14) In his cross-examination the witness has said that he cannot say that as to how many warrants he was having and in which villages he had gone in search of wanted accused persons. After receiving the information from the police informer the police party had reached to the

place of occurrence within 15-20 minutes. The Circle Officer had reached within half an hour after receiving the information. The consent memo was prepared in his writing. In the recovery memo he had not given any option of personal search before the Magistrate. The packet of representative sample has not been produced before the court. He is unable to remember as to when he had sent information to superior police officers.

(15) **PW3 Gyan Chandra**, the head constable who was part of the raiding police party, has in his deposition dated 15.01.2025 stated that on 19.07.2023 he was posted at police station Diyuriya Kalan. On that day he had gone with the police party in connection with maintenance of the law and order. When the members of police party were talking to each other near village Mirpur, Ratanpur, a police informer came and informed the complainant about accused persons Akeel is waiting for someone near Rampur-Fazilpur canal under a tree. Satnam Singh is also present with Akeel. Akeel is having in his possession contraband Charas and country made gun whereas Satnam is having country made gun in his possession. If the police party will do it fast, they can be arrested. Believing upon this information the complainant made call to Circle Officer. The members of police party made inter se searches of each other. Thereafter, the police party along with the police informer reached to the place of occurrence. The police informer left the place of occurrence after indicating towards the accused persons. The accused persons were nabbed at 08.05. On being interrogated accused Akeel said that he is having illegal country made gun and contraband charas with him whereupon he was intimated that he has a legal right of personal search before any gazetted officer/Magistrate if he so desires. The Circle Officer also had arrived on the place of occurrence. A consent memo was prepared. On personal search contraband substance which was wrapped in black polythene was recovered from the right side pocket of his pants. On smelling the same, it smelt like Charas. A country made gun 315 bore was also recovered from him. Two live cartridges were recovered from left pocket of his pants. The contraband substance weighed about 150 gm out of which a sample of 30 gm was

separated and the substances were wrapped separately on the spot. The contraband substance was sealed with the seal of complainant. The another accused person disclosed his name as Satnam Singh and during his personal search a country made gun and a live cartridge were recovered. The recovered materials were sealed separately. The police party tried to associate independent public witnesses with itself but no one came forward. Recovery memo was prepared on the spot in the handwriting of this witness. A copy of recovery memo was given to accused Akeel. Information regarding the incident was given to superior police officers in writing by the complainant. In this way this witness has fully supported the prosecution story.

(16) This witness in his cross-examination has said that the police party had received information from police informer at 7 o'clock. They had called the Circle Officer on the spot because they thought that the contraband substance and illegal guns will be recovered. After receiving the information the police party tried to associate public witnesses but no one was willing to become a witness. It is true that in the recovery memo option of search before Magistrate has not been mentioned. The police party had spent about 2 hours in drawing up the recovery memo on the spot. The witness has denied the suggestion that the accused was brought from his home and falsely implicated in this matter.

(17) **PW5 Satish Chandra Shukla**, the Circle Officer, has in his deposition dated 29.07.2025 stated that on 19.07.2023 complainant Ramveer Singh had given information to him on phone regarding the incident and requested him to reach to the place of occurrence. He had reached to place of occurrence at or about 08.05. Both the accused persons Akeel and Satnam were under a tree near Raipur Fazilpur. He had informed accused Akeel about his legal right that if he so desire, his personal search can be done before any gazetted officer/Magistrate. The accused expressed his desire of personal search before a gazetted officer whereupon a consent memo was drawn up and read out to him by the complainant. During personal search of accused Akeel a black polythene was recovered from the right side pocket of his pants in which contraband material was wrapped. A country made gun and two

live cartridges were also recovered. The contraband material weighed 150 gm on electronic weigh balance. A representative sample of 30 gm was separated for the purpose of chemical examination. The parent material and the sample were packed and sealed separately on the spot. The second accused persons disclosed his name as Satnam Singh from whose possession a country made gun 315 bore and two live cartridges were recovered. These materials were also sealed. No public witness was ready to become witness in spite of being requested. The accused persons did not disclose anything regarding recovery of contraband material and country made guns, therefore, they were taken into police custody. Recovery memo was prepared on the spot by constable Gyan Chandra. Arrest memo was also prepared. He has also identified his signature on the recovery memo. Information regarding incident was given to superior officers. In this way this witness has also supported the prosecution story.

(18) This witness in his cross-examination has said that the consent memo was prepared after 08.05. In the consent memo weight of Charas, 150 gm has been written. After receiving the information about incident he had reached to the place of occurrence within 20-25 minutes from Bisalpur. It had taken more than one hour in preparing the prosecution papers on the spot. After the incident the witness had gone to his office. The witness has denied the suggestion that he has merely put signatures on the above papers at his office.

(19) Of the Analytic of Depositions of Formal Witnesses:-The prosecution has examined as many as 03 formal witnesses. **PW2 Sumit Kumar**, the constable clerk, has in his deposition dated 30.11.2024 said that on 19.07.2023 complainant Ramveer Singh had brought before him one recovery memo of 150 gm Charas, two country made guns of 315 bore, three live cartridges and two arrested accused persons and other papers. He had registered the FIR on oral direction of SHO. He has proved the Chick FIR as Ex. A9 and copy of GD as Ex. A10. This witness in his cross-examination said that the investigating officer had come to him at 10.45. The computer operator Niket Verma had typed the FIR on his dictation.

- (20) **PW4 Rajendra Singh**, the investigating officer, has in his deposition dated 15.01.2025 stated that on 17.09.2023 he was posted as sub-inspector at police station Diyuriya Kalan. He had received the instant matter. He had recorded the statements of witnesses and drawn up the site map in his handwriting, at the instance of complainant. The site map has been proved as Ex. A11. He had submitted the charge-sheet against the accused Akeel and the same has been proved as Ex. A12. He has also proved the FSL report as Ex. A13. Accused is a habitual offender and many cases are pending against him including cases under Gangster Act. The complainant had given written information about the incident to Superintendent of Police. This witness in his cross-examination has said that during the course of investigation he had seen the contraband material at the instance of complainant at police station. Thereafter, during the course of investigation he had not seen the contraband material. He cannot say as to in which condition the recovered contraband material is in police Malkhana. No docket form is available on the records. Entry regarding docket form has not been done in the case diary. Therefore, he cannot say that docket form was prepared or not. Had the docket form been prepared, it might have been mentioned in the case diary. There is no GD on the record that the contraband material was taken out from the police station. He had not taken the contraband material from police station during the course of investigation.
- (21) **PW6 Harnarayan**, has in his deposition dated 19.09.2025 said that at the time of incident he had posted as Head Constable at police station Diyuriya Kalan. On 11.09.2023 he had received the 30 gm representative sample which he had deposited in the FSL Bareilly on the same day. He has proved the docket receipt as Ex. A14. This witness in his cross-examination has said that docket was given to him by Head Muharrir at on 11.09.2023 at or about 09.00 am. No GD was drawn up in his presence regarding it. No such GD is available on the record.
- (22) Of the Analytic of the defence evidence:- In order to refute the charges levelled against the accused, the prosecution has examined two defence witnesses. **DW1 Dharmendra Singh**, has in his deposition

dated 02.01.2026 said that he is the resident of the village in which accused Akeel resides. On 19.07.2023 at or about 05.00 am when he was going to his agricultural field, he had seen 4-5 police personnel outside the home of Sampurna Singh, father of accused Akeel. The police personnel were looking out for Sampurna Singh. When the accused said that his father is not at home, the police personnel had taken him by the police Jeep. Later on, he came to know that Akeel has been falsely framed in a case for possession of contraband Charas and has been sent to jail. The witness has in his cross-examination said that he does not know as to in how many cases Akeel is an accused and how many times he has gone to jail. He is unable to remember the date of the incident. The incident is of morning at or about 6-7 am. The witness has denied the suggestion that Akeel is a habitual offender and he is giving false deposition to screen him.

(23) **DW2 Shri Ramkripal**, has in his deposition dated 04.02.2026 stated that accused Akeel is his neighbour. On 19.07.2023 he was going to his agricultural field in the morning. When he reached near the home of Sampurna Singh he found that 4 - 5 police personnel had come by government Jeep. When Akeel said that his father is not at home, the police personnel had taken along by the government Jeep. Later on, he came to know that he has been framed in a false case of recovery of contraband Charas. He has said in his cross-examination that today he has come with accused to depose on his behalf. He has not received any summons from the court. Before coming to the court he had met with the advocate of the accused. He does not know what is the case against accused Akeel. He also does not know as to in how many cases he is involved. He has denied the suggestion that he is giving false deposition because of being neighbor of the accused.

(24) Of the Non-compliance of section 50 of the Act:-The first and foremost argument of the defence is that in the instant case the recovery of contraband material has been shown from the person of the accused, however, section 50 of the Act has not been complied in letter and spirit. Therefore, the most important question which arises for consideration is whether the search/recovery made by the police officials from the

accused of the alleged contraband (Charas) is in accordance with the procedure prescribed under Section 50 of the NDPS Act. In other words, the question that arises for consideration is whether the prosecution was able to prove that the procedure prescribed under Section 50 of the NDPS Act was followed by the Police Officials in letter and spirit while making the search and recovery of the contraband “Charas” from the accused. It is noteworthy that in the instant case the recovery of contraband material from the accused has been shown from the spot of crime. He has not been taken to gazetted officer/Magistrate for search. Insead a gazetted officer of police department was called to the place of occurrence by the raiding police party before conducting the raid. Constitution Bench of Hon'ble Supreme Court in **Vijaysinh Chandubha Jadeja VS. State of Gujarat** 2011 (I) JIC 624 (SC) held as under:-

In view of the foregoing discussion, we are of the firm opinion that the object with which the right under section 50 (1) of the N.D.P.S. Act, by way of a safeguard, has been conferred on the suspect viz. to check the misuse of power, to avoid harm to innocent persons and to minimize the allegations of planting or foisting of false cases by the law enforcement agencies, it would be imperative on the part of the empowered officer to apprise the person intended to be searched of his right to be searched before a Gazetted Officer or a Magistrate. We have no hesitation in holding that in so far as the obligation of the authorized officer under sub-section (1) of Section 50 of the N.D.P.S. Act is concerned, it is mandatory and requires strict compliance. Failure to comply with the provision would render the recovery of the illicit article suspect and vitiate the conviction if the same is recorded only on the basis of the recovery of the illicit articles from the persons of the accused during such search. Thereafter, the suspect may or may not choose to exercise the right provided to him under the said provision.

We are of the opinion that the concept of “substantial compliance” with the requirement of section 50 of the NDPS Act introduced and read into the mandate of the said Section in **Joseph Fernandez (Supra) and Prabha Shankar Dubey (2001) 1 SCC 707** is neither borne out from the language of sub-section (1) of Section 50 nor it is in consonance with the dictum laid down in Baldev Singh case (Supra). Needless to add that the question whether or not the procedure prescribed has been followed and the requirement of Section 50n had been met, is a matter of trial. It would neither be possible nor feasible to lay down any absolute formula in that behalf.

We also feel that though Section 50 gives an option to the empowered officer to take such person (suspect) either before the nearest Gazetted Officer or the Magistrate but in order to impart authenticity, transparency and creditworthiness to the entire proceedings, in the first instance, and endeavour should be to produce the suspect before the nearest Magistrate, who enjoys more confidence of the common man compared to any other officer. It would not only add legitimacy to the search proceedings, it may verily strengthen the prosecution as well.

(25) It is noteworthy that Hon'ble Supreme Court in the matter of **Arif Khan @ Agha Khan vs. The State of Uttarakhand**, AIR 2018 SC 2123, where 2.5 kg Charas was recovered from accused on the basis of secret information and he had given consent for search by the raiding police party has held in para no-23 and 28 as under:-

23. Their Lordships have held in Vijaysinh Chandubha Jadeja (supra) that the requirements of Section 50 of the NDPS Act are mandatory and, therefore, the provisions of Section 50 must be strictly complied with. It is held that it is imperative on the part of the Police Officer to apprise the person intended to be searched of his right under Section 50 to be searched only before a Gazetted officer or a Magistrate. It is held that it is equally mandatory on the part of the authorized officer to make the suspect aware of the existence of his right to be searched before a Gazetted Officer or a Magistrate, if so required by him and this requires a strict compliance. It is ruled that the suspect person may or may not choose to exercise the right provided to him under Section 50 of the NDPS Act but so far as the officer is concerned, an obligation is cast upon him under Section 50 of the NDPS Act to apprise the suspect of his right to be searched before a Gazetted Officer or a Magistrate. (See also Ashok Kumar Sharma vs. State of Rajasthan, 2013 (2) SCC 67 and Narcotics Control Bureau vs. Sukh Dev Raj Sodhi, 2011 (6) SCC 392).

28. First, it is an admitted fact emerging from the record of the case that the appellant was not produced before any Magistrate or Gazetted Officer; Second, it is also an admitted fact that due to the aforementioned first reason, the search and recovery of the contraband "Charas" was not made from the appellant in the presence of any Magistrate or Gazetted Officer; Third, it is also an admitted fact that none of the police officials of the raiding party, who recovered the contraband "Charas" from him, was the Gazetted Officer and nor they could be and, therefore, they were not empowered to make search and recovery from the appellant of the contraband "Charas" as provided under Section 50 of the NDPS Act except in the presence of either a Magistrate or a Gazetted Officer; Fourth, in order to make the search and recovery of the contraband articles from the body of the suspect, the search and recovery has to be in conformity with the requirements of Section 50 of the NDPS Act. It is, therefore, mandatory for the prosecution to prove that the search and recovery was made from the appellant in the presence of a Magistrate or a Gazetted Officer.

(26) Ld. counsel for the defence has while arguing that the mandatory provisions of section 50 of the Act has not been complied with, placed reliance upon **Narcotics Central Bureau vs. Sukhdev Raj Sodhi** 2011(2) J.Cr.C. 901. In this matter accused was convicted by the Trial Court. Hon'ble High Court was pleased to set aside the conviction and Hon'ble Supreme Court dismissed the appeal. In this matter the only issue involved was regarding compliance of section 50 of the Act. In this matter accused was given option of being searched either in presence of gazetted officer or Magistrate and it appears that the

accused wanted to be searched in presence of gazetted officer. In this matter it was held in para no 6 as under:-

"From the perusal of the conclusion arrived at by this Court in Vijaysinh Chandubha Jadeja's case, it appears that the requirement under Section 50 of the NDPS Act is not complied with by merely informing the accused of his option to be searched either in the presence of a gazetted officer or before a Magistrate. The requirement continues even after that and it is required that the accused person is actually brought before the gazetted officer or the Magistrate and in Para 32, the Constitution Bench made it clear that in order to impart authenticity, transparency and creditworthiness to the entire proceedings, an endeavour should be made by the prosecuting agency to produce the suspect before the nearest Magistrate."

(27) In the above matter, it is not clear that the personal search of the accused was done in presence of gazetted officer or not. It is also not clear that the recovery was from the person of accused or any bag etc. being carried by him. However, in the matter at hand the recovery of contraband substance is from the right side pocket of his pants/lower. The said recovery has taken place in presence of gazetted officer as required by the accused on being made aware of his right u/s-50 of the Act as is apparent from the perusal of consent memo. In the present matter the recovery of contraband material is from the person of the accused in presence of gazetted officer. It is also noteworthy that the ld. defence counsel has argued that as per FIR the accused was given only one option of search before the gazetted officer. He was not apprised of the alternative right of search before a Magistrate. It is noteworthy that when we peruse the consent memo which was prepared simultaneously with the recovery memo, it is apparent that the accused was given both the options of search and he exercised his right of search before gazetted officer. From the perusal of depositions of PW1 Raghuveer Singh, PW3 Gyanchandra and PW5 Satish Chandra Shukla also it is apparent that the accused was given both the options of personal search. Thus, from the perusal of recovery memo as well as depositions of witnesses of fact it is abundantly conspicuous that the accused was apprised of his right u/s-50 of the Act whereupon he chose to exercise the option of personal search before a gazetted officer and the same was carried out which resulted into recovery of 150 gm Charas. It has also been contended by the ld. defence counsel that from perusal of consent

memo it is clear that the accused was personally searched and thereafter, consent memo was drawn up. It is noteworthy that the evidence is to be looked into in its totality. Merely because in the consent memo it has been mentioned that 150 gm charas has been recovered from you, it cannot be said that the search was made before arrival of gazetted officer. When we look into the depositions of PW1 Ramveer Singh, PW3 Gyanchandra and PW5 Satish Chandra Shukla it is conspicuous that recovery of Charas was done in presence of gazetted officer, PW5 Satish Chandra Shukla. Hence, above contention of the ld. defence counsel is not tenable. Therefore, the provisions of section 50 has been complied with in letter and spirit.

- (28) Of the Non-examination of public witness:- It has also been argued that in spite of possibilities, in the instant case the raiding party has not made any person or any member of public, a witness. It is not sufficient to say that they tried to secure public witness but none came forward. The said argument of defence is not tenable. Police persons are also competent witness and their deposition can be relied upon if the same inspires confidence. In **Jarnail Singh Vs. State of Punjab**, 2011 CRLJ 1738 (SC) where the accused, on seeing the police party, made an attempt to turn back and escape out was overpowered by the police party and on his arrest and search "Charas" was recovered from his possession for which he had no licence and after prosecution he was convicted for the offence u/s. 20 of the NDPS Act 1985, it has been held by the Supreme Court that the obligation to take public witness (independent witness) is not absolute. If after making efforts which the Court considers in the circumstances of the case reasonable the police officer is not able to get public witness to associate with the raid or arrest of the culprit, arrest and the recovery made would not be necessarily vitiated. The court will have to appreciate the relevant evidence and will have to determine whether the evidence of the police officer is believable after taking due care and caution in evaluating their evidence.

- (29) In the matter of **Kulwinder Singh's case** (supra) relying on the judgment of State (Govt. of NCT of Delhi) vs. Sunil (2001) 1 SCC 652 it was held in para no-21 as under:-

21“We feel that it is an archaic notion that actions of the police officer should be approached with initial distrust. We are aware that such a notion was lavishly entertained during the British period and policemen also knew about it. Its hangover persisted during post-independent years but it is time now to start placing at least initial trust on the actions and the documents made by the police. At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature. Hence when a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the accused it is open to the court to believe the version to be correct if it is not otherwise shown to be unreliable. It is for the accused, through cross-examination of witnesses or through any other materials, to show that the evidence of the police officer is either unreliable or at least unsafe to be acted upon in a particular case. If the court has any good reason to suspect the truthfulness of such records of the police the court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions.”

- (30) In the instant case the complainant and other police personnel were on patrolling duty and, they have tried to ensure presence of public witness but no one from the public was being ready to become witness. PW1 Ramveer Singh, PW3 Gyanchandra as well as PW5 Satish Chandra Shukla have in their respective depositions said that they requested the members of public to become witnesses of recovery but no one was ready to become witness and left the place of occurrence without disclosing their names and addresses. It is noteworthy that generally the members of public are averse to become witnesses. The members of general public are very loathsome to come forward to be a witness. Therefore, only on this ground that no public witness has been examined, prosecution story should not be disbelieved. The prosecution story cannot be disbelieved only on this sole ground whereas the stark reality of the society is that generally the people do not come forward to be a police witness in a case.

- (31) The defence of planted recovery:- It has been vehemently argued by the defence counsel that the accused was lifted from his house by the

police party and false recovery has been implanted on the accused. DW1 Dharmendra Singh and DW2 Ramkripal Singh have in their respective depositions said that the accused was taken away by the police party from his home on 19.07.2023 in the morning and later on, they came to know that the accused has been falsely implicated in the case of recovery of contraband Charas. It is noteworthy that both the above witnesses are close neighbors of the accused and ipso facto they are interested witnesses. It is also noteworthy that in his statement u/s-313 CrPC the accused has said the same thing. The defence has not assigned any reason as to why the accused will be falsely implicated by the police without any rhyme or reason. It is noteworthy that in the instant case 150 gm contraband Charas has been recovered from the pocket of the accused. The said contraband material has been produced before the Court and the same has been proved as Mat. Ex.-3. The sample of recovered material was also sent to F.S.L., Bareilly for chemical examination. The FSL, Bareilly report dated 21.11.2023 confirms that the contraband material recovered from the accused is Charas. It has been contended by the ld. defence counsel that the FSL report has been exhibited by PW4 Investigating Officer Rajendra Singh. The report has not been prepared by him and therefore, he is not competent to prove the same. In **Tasawwar Ansari vs. The Union of India**, Cr. A. No. 635 of 1996 dt. 31 July 1997 (Allahabad High Court) it has been held that the Report of F.S.L. does not require to be proved by Scientist/Analyzer formally in the view of provision contained in Section 293 Cr.P.C.. It has also been contended by the counsel for the defence that the remaining Charas which was kept in the Malkhana has not been chemically examined and therefore it cannot be said that the same is contraband Charas. The later part of the argument of the defence counsel is not supportable. The entire narcotic/psychotropic substance recovered is not sent for chemical examination, instead a part of it is only sent as is the general prevailing practice. Furthermore, if the said contention is allowed then it can also be argued that every bit of the recovered contraband material has not been chemically examined.

(32) Of the Non Compliance of Section 42(2) of the Act:- It has been argued by the Id. defence counsel that the prosecution has failed to comply with the provision of 42(2) of the Act, therefore the accused is liable to be acquitted. Section 42 of the Act provides as under:-

42. Power of entry, search, seizure and arrest without warrant or authorisation.—(1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including paramilitary forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from persons knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,

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

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

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act.

Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector

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 seventy-two hours send a copy thereof to his immediate official superior.

(33) Thus, section 42 provides that a police officer after getting information about impending recovery of narcotic substance is required to take down the said information in writing under sub section (1) shall within 72 hours send a copy of report to his immediate official superior. It is noteworthy that in the instant case the accused has been arrested from a public place. Therefore, provisions of section 42 would not be applicable instead provisions of section 43 of the Act would be applicable which does not provide for compliance as required to be made under section 42 of the Act. However, it is noteworthy that in spite of arrest of the accused and recovery of the contraband material at a public place, PW1 Ramveer Singh has complied with the provisions of section 42(2) on the date of incident itself and has sent written report, Ex. A4 to Superintendent of Police.

(34) Of the Non-compliance of Provisions of Section 52A of the Act:-

The ld. counsel for the defence has also contended that the mandatory provisions of section 52A of the Act has not been complied by the complainant and neither the sample has been taken in presence of Magistrate nor any inventory has been drawn up and hence the accused is liable to be acquitted. Before we proceed further it would be pertinent to have look at section 52A of the Act which runs as under:-

52A Disposal of seized narcotic drugs and psychotropic substances.—

(1)The Central Government may, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration, in respect of any narcotic drugs, psychotropic substances, controlled substances or conveyances, by notification in the Official Gazette, specify such narcotic drugs, psychotropic substances, controlled substances or conveyance or class of narcotic drugs, class of psychotropic substances, class of controlled substances or conveyances, which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may, from time to time, determine after following the procedure hereinafter specified.

(2) Where any narcotic drugs, psychotropic substances, controlled substances or conveyances has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the officer referred to in sub-section (1) shall prepare an inventory of such narcotic drugs or psychotropic substances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs or psychotropic substances or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the narcotic drugs or psychotropic substances in any proceedings under this Act and make an application, to any 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, substances or conveyances 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.

(3) Where an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.

(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying an offence under this Act, shall treat the inventory, the photographs of narcotic drugs, psychotropic substances, controlled substances or conveyances and any list of samples drawn under subsection (2) and certified by the Magistrate, as primary evidence in respect of such offence.

(35) It is noteworthy that the above section was introduced by way of amendment in 1989 and came into effect from 29.05.1989. In the matter of **Bharat Ambale vs. State of Chhattisgarh** (2025) 8 SCC 452 accused was held guilty u/s-20 of the Act. Hon'ble High Court affirmed the same. The only contention raised before Hon'ble Supreme Court was that conviction of accused vitiated due to non-compliance of section 52A of the Act. Dismissing the appeal Hon'ble Supreme Court held in para no-30 as under:-

30. Thus, from above it is clear that the procedure prescribed by the Standing Order(s) / Rules in terms of Section 52A of the NDPS Act is only intended to guide the officers and to ensure that a fair procedure is adopted by the officer-in-charge of the investigation, and as such what is required is substantial compliance of the procedure laid therein. We say so because, due to varying circumstances, there may be situations wherein it may not always be possible to forward the seized contraband immediately for the purpose of sampling. This could be due to various factors, such as the sheer volume of the contraband, the peculiar nature of the place of seizure, or owing to the volatility of the substance so seized that may warrant slow and safe handling. There could be situations where such contraband after being sampled cannot be preserved due to its hazardous nature and must be destroyed forthwith or vice-verse where the nature of the case demands that they are preserved and remain untouched. Due to such multitude of possibilities or situations, neither can the police be realistically expected to rigidly adhere to the procedure laid down in Section 52A or its allied Rules / Orders, nor can a strait-jacket formula be applied for insisting compliance of each procedure in a specified timeline to the letter, due to varying situations or requirements of each case. Thus, what is actually required is only a substantial compliance of the procedure laid down under Section 52A of the NDPS Act and the Standing Order(s) / Rules framed thereunder, and any discrepancy or deviation in the same may lead the court to draw an adverse inference against the police as per the facts of each and every case. When it comes to the outcome of trial, it is only after taking a cumulative view of the entire material on record including such discrepancies, that the court should proceed either to convict or acquit the accused. Non-compliance of the procedure envisaged under Section 52A may be fatal only in cases where such non-compliance goes to the heart or root of the matter. In other words, the discrepancy should be such that it renders the entire case of the prosecution doubtful, such as instances where there are significant discrepancies in the colour or description of the substance seized from that indicated in the FSL report as was the case in Noor Aga (supra), or where the contraband was mixed in and stored with some other commodity like vegetables and there is no credible indication of whether the

narcotic substance was separated and then weighed as required under the Standing Order(s) or Rules, thereby raising doubts over the actual quantity seized as was the case in Mohammad Khalid (supra), or where the recovery itself is suspicious and uncorroborated by any witnesses such as in Mangilal (supra), or where the bulk material seized in contravention of Section 52A was not produced before the court despite being directed to be preserved etc. These illustrations are only for the purposes of brining clarity on what may constitute as a significant discrepancy in a given case, and by no means is either exhaustive in nature or supposed to be applied mechanically in any proceeding under the NDPS Act. It is for the courts to see what constitutes as a significant discrepancy, keeping in mind the peculiar facts, the materials on record and the evidence adduced. At the same time, we may caution the courts, not to be hyper-technical whilst looking into the discrepancies that may exist, like slight differences in the weight, colour or numbering of the sample etc. The Court may not discard the entire prosecution case looking into such discrepancies as more often than not an ordinarily an officer in a public place would not be carrying a good scale with him, as held in Noor Aga (supra). It is only those discrepancies which particularly have the propensity to create a doubt or false impression of illegal possession or recovery, or to overstate or inflate the potency, quality or weight of the substance seized that may be pertinent and not mere clerical mistakes, provided they are explained properly. Whether, a particular discrepancy is critical to the prosecution's case would depend on the facts of each case, the nature of substance seized, the quality of evidence on record etc.

- (36) Thus, it is noteworthy that the provisions of section 52A of the Act is not of obligatory or mandatory nature. However, the provisions ought to be complied with and where the same have not been complied with, the accused should show that it has resulted into serious prejudice to him. However, the defence has not shown that there is any discrepancy in the colour or description of substance seized. The defence has also not shown any discrepancy in separating the substance seized or its weighment or the recovery is suspicious or uncorroborated by any witness or the substance seized was not produced before the court. It is noteworthy that the prosecution has proved by cogent evidence that the accused was in conscious possession of the narcotic substance seized. Hence, failure to comply with the provisions of section 52A of the Act has not resulted into any prejudice or bias to accused in his defence.

- (37) Of the Non-compliance of Provisions of Section 57 of the Act:- The Id. counsel for the defence has argued that the complainant has not complied with the provisions of section 57 of the Act. The said contention of the Id. defence counsel is not true. Section 57 of the Act provides that the arrest or seizure under the Act is required to be

reported to immediate official superior within 48 hours. The said section as under:-

57. Report of arrest and seizure.—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.

(38) In the instant matter accused has been arrested by PW1 Ramveer Singh and contraband Charas has allegedly been recovered from him. He has said in his direct examination that he had sent a written report to Superintendent of Police regarding the incident and the same has been proved as Ex. A5 from perusal of which it transpires that the report has been sent on the date of incident itself. Thus, the provisions of the section 57 of the Act has been complied with.

(39) Of the investigation by Police Officer of same police station:- It has also been contended by the defence that the complainant was sub-inspector of police posted at police station Diyuriya Kalan on the date of incident whereas PW4 Investigating Officer Rajendra Singh was also posted as sub-inspector at the same police station. Hence, the investigation is tainted. It is true that the investigating officer was posted in the same police station. Merely, because the investigating officer is posted in the same police station, it cannot be presumed that the investigation carried out by him is biased and tainted. However, even if it is presumed that the investigation is not wholly independent, the same cannot form sole ground to acquit the accused if the prosecution story has been proved beyond reasonable doubts, on the other hand, where the prosecution story is not proved beyond reasonable doubts, tainted investigation may be a ground to doubt the veracity of prosecution story. Furthermore, so far as the argument of the ld. defence counsel that that the entry regarding sending the contraband material to FSL has not been made in the CD is concerned, it is true that IO has accepted that he has not made entry regarding this in the CD and the docket form is not available on the record. But merely on this basis the prosecution story cannot be doubted upon. PW6 Harnarayan has proved that he has taken the docket to FSL Bareilly on 11.09.2023 and he has proved the docket form available on the record as Ex. A14.

(40) Of the Criminal liability of the accused :- In the facts and circumstances of the case it is clearly made out that the prosecution has successfully proved that 150 gm Charas has been recovered from the possession of accused Akeel on 19.07.2023. The accused was carrying 150 gm Charas in the right side pocket of his pants/lower and he has been arrested at a public place. The said recovery has been made in presence of gazetted officer. After taking the sample for chemical examination, the rest narcotic substance was sealed on the spot. The sample has been sent for chemical examination. According to the report of F.S.L., Bareilly dt. 21.11.2023, the sample sent for chemical examination was found to be Charas, the same is a contraband material as mentioned at serial number 23 of the schedule attached with NDPS Act. The small quantity of the said contraband substance is 100 gm whereas the commercial quantity is 01 kg. Furthermore, section 54 of the Act provides as under:-

54. 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 opium poppy, cannabis plant or coca plant growing on any land which he has cultivated;
- (c) any apparatus specially designed or any group of utensils specially 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.

(41) It is noteworthy that prosecution has been successful in establishing that the accused was in possession of 150 gm charas of which he had no licence or authority to legally possess the same. In view of section 54 it is clear that unless satisfactory account is given for possession of narcotic/ psychotropic substance by the accused, there is presumption that the accused has committed offence under chapter IV of the Act. A person is presumed to be in possession of the contents of which he has a controlled over. From a conjoint reading of provisions of section 54 and 35 it becomes abundantly clear that once an accused, is

found to be in possession of contraband material, he is presumed to have committed offence, under relevant provisions of the Act, until the contrary is proved by him. This provision is to the effect that when the prosecution has shown by evidence that an accused had dealt with the Narcotic Drugs or Psychotropic Substance or is in any way in physical custody of the same or is directly concerned with it the onus shifts to the accused to prove beyond doubt that he did not knowingly possessed the said drugs or substance. If the accused failed to discharge his onus he is liable to be convicted and punished accordingly. In the instant case the prosecution has successfully proved that the accused was in possession of 150 gm charas. It is also noteworthy that the accused has examined DW1 Dharmendra Singh and DW2 Ramkripal to disprove the case of the prosecution but as discussed hereinabove it has been found that the above accused persons are interested neighbours of the accused and ipso facto their testimonies are not trustworthy. Therefore, the prosecution has successfully proved the charge u/s-8/20 of NDPS Act levelled against the accused Akeel beyond reasonable doubts and therefore, he is liable to be convicted for the said offence.

- (42) Epilogue:- On the basis of above discussion it is abundantly clear that PW-1 complainant Ramveer Singh and PW3 Gyan Chandra have clearly proved that on 19.07.2023 at or around 08.05 am when they arrested the accused, he was found in possession of 150 gm charas which was in the right side pocket of his pants/lower. The said recovery has been done in presence of gazetted officer PW5 Satish Chandra Shukla after due compliance of the provisions of section 50 of the Act. The sample sent for chemical examination was found to be Charas as per report of FSL, Bareilly dt. 21.11.2023. It is also noteworthy that the recovery of the offending contraband material has taken place from a public place therefore, compliance of section 40(2) of the Act is not required. However, the complainant has also promptly complied with the provisions of the section 42 and 57 of the Act. Thus, the prosecution has successfully proved that the accused was in conscious possession of contraband narcotics material. The accused has not given any defence evidence to rebut the legal presumption under section 54 of the Act. The

said recovery comes in the category of intermediate quantity. The sample sent for chemical examination to FSL Bareilly was found positive. In this way, in the facts and circumstances of the case the prosecution has successfully proved beyond reasonable doubt that the accused Akeel is guilty of offence u/s-8/20 of NDPS Act. Therefore, the accused Akeel is liable to be punished u/s-8/20 of NDPS Act.

ORDER OF CONVICTION

1. Hereby, the accused Akeel s/o-Sampurna Singh @ Nati, r/o-Vill. Mirpur Ratanpur Jhala, p/s-Diyuriya Kalan, District Pilibhit is, convicted u/s-8/20 of NDPS Act, in case crime no-169/2023, SST No-1578/2023 State Vs. Akeel, p/s-Diyuriya Kalan, District-Pilibhit.
2. Accused Akeel is present in the Court. Let he be taken into custody forthwith. The accused Akeel is on bail, his personal bond and the bail bonds furnished by sureties are cancelled and the sureties are discharged from the liability of suretyship.
3. Put up on 10.03.2026 for hearing on the quantum of sentence.

Dated: 07.03.2026

(Mahesha Nand Jha)
Special Judge (N.D.P.S.Act)/
Additional Sessions Judge
Court No-III, Pilibhit.
JO Code-UP6289

Of the Quantum of Sentence

10.03.2026

1. The case came up for hearing on the question of quantum of punishment to convict Akeel. The learned counsel for the convict as well as learned Id. ADGC (Criminal) for the State are present. The respective counsels were heard on the point of sentence.
2. The Id. Counsel for convict Akeel has submitted the convict is a poor young man. He has no criminal history and it is his first offence. His whole future life is at stake. He has a family to look after and is the sole bread earner of his family. Hence, lenient view be taken while awarding sentence against him.
3. Per contra, learned ADGC (criminal) has argued that the convict, has committed a very serious crime. Intermediate quantity of charas has

been recovered from the possession of convict. The convict is also involved in other cases under NDPS Act which are under trial. Hence, the convict is liable to be punished with maximum punishment provided for the offence.

4. It is noteworthy that the quantity of contraband narcotic drugs recovered from the possession of accused is intermediate quantity as mentioned at serial number 23 of the notification appended to the Act however, the recovered quantity of recovered contraband material is little bit above the small quantity. It is also noteworthy that the prosecution has neither alleged nor proved that the convict is a previous convict either under N.D.P.S. Act or any other Act. It is noteworthy that in case of recovery of intermediate quantity of narcotic/psychotropic substance from the convict, section 8/20 provides for rigorous imprisonment for a term up to 10 years and fine which may extend to 1 lakh rupee. This Court after carefully considering the rival contentions of the parties is of the considered opinion that considering the facts and circumstances of the case, it would be expedient to sentence the accused as under:-

Order of Sentence

1. Convict Akeel is, hereby, sentenced u/s-8/20 Narcotic Drugs And Psychotropic Substance Act, 1985, to undergo rigorous imprisonment for 04 years and shall also pay fine of Rs. 50,000/- and in case of default in payment of fine, he shall further undergo rigorous imprisonment of 06 months.
2. Let conviction warrant of the convict Akeel be prepared and he be committed to District Jail, Pilibhit to serve the remaining period of sentence awarded to him. The convict shall be entitled to set off of the period of imprisonment already spent by him in the jail as per the provisions of section 428 of Cr.P.C.
3. Material Exhibits shall be kept intact till the expiry of the period of appeal. In case of appeal the Material Exhibits shall be dealt with in accordance with the directions of Appellate Court.

Dated: 10.03.2026

(Mahesha Nand Jha)
Special Judge (N.D.P.S.Act)/
Additional Sessions Judge
Court No-III, Pilibhit.
JO Code-UP 6289

Judgment was signed, dated and pronounced by me in the open Court today.

Date-10.03.2026
Sanju Gangwar
(Stenographer)

(Mahesha Nand Jha)
Special Judge (N.D.P.S. Act)/
Additional Sessions Judge
Court No-III, Pilibhit.
JO Code UP -6289