

Form-A

**In the Court of the First Additional Sessions Judge-
Cum-Special Judge (N.D.P.S.), Berhampur, Ganjam.**

**Present : Sri Naresh Mohanty, O.S.J.S.,
Judicial Officer's Code No.OD-00335,**

Date of Judgment

Dated, this the 15th day of July, 2026.

2(a)C.C.20/2025 (N)

E. Court No.2(a)CC 20/2025

Details of P.R./Crime and Excise Station

*(Arising out of P.R. No.06/2025-26 dated-22.04.2025 of
Inspector of Excise, Sadar Range, Berhampur for the
offence U/s.20(b)(ii)(B) of N.D.P.S. Act).*

Complainant	State of Odisha
Represented by	Sri Maguni Charan Polei, Special Public Prosecutor
Accused	(A1) M. Sasi Kumar , aged about 24 years, S/o. Late M. Murgesh, (A2) A. Rahul Kumar , S/o. R. Ayyappan, aged about 23 years, Both are of At – Old Bus Stand, Tiruppur, PO/PS/District – Tiruppur, State – Tamilnadu.
Represented by	Sri K.P. Pattnaik & Sarmistha Kar, Advocates, Berhampur.

Form-B

Date of Offence	22.04.2025
Date of F.I.R./P.R.	22.04.2025
Date of Final P.R.	20.06.2025
Date of Framing of Charge	03.07.2025
Date of commencement of evidence	23.07.2025
Date on which judgment is reserved	06.07.2026
Date of the Judgment	15.07.2026
Date of the Sentencing Order, if any	-

Accused Details

Name of the Accused	As above.
Rank of the Accused	A1 & A2
Date of Arrest	22.04.2025
Date of Release on Bail	23.09.2025
Offences charged with	U/s.20(b)(ii)(B) of N.D.P.S. Act
Whether acquitted or convicted	Convicted
Sentence imposed	undergo rigorous imprisonment for Three (03) Years and to pay a fine of ₹.10,000/- (Rupees Ten Thousand) each and in default to undergo further rigorous imprisonment for Three (3) Months for the offence U/s.20(b)(ii)(B) of the N.D.P.S. Act.
Period of Detention undergone during Trial for purpose of section 428 Cr.P.C.	22.04.2025 to 22.09.2025

J U D G M E N T

The accused persons namely M. Sasi Kumar and A. Rahul Kumar stand charged for commission of the offence punishable U/s.20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, the “N.D.P.S. Act”).

2. The prosecution case in brief is that on 22.04.2025 at about 11A.M. while the Inspector of Excise, Sadar Range, Berhampur and his staff were conducting patrolling duty on the road of railway station in front of East Cost Railway Shramik Congress, Berhampur Branch and its nearby areas, he saw two persons were coming from Railway Level Crossing Ramnagar, Berhampur side towards Berhampur

Railway Station in a doubtful manner and carried a white colour jerry sack having some contraband articles holding on their both hands. On suspicion, Inspector of Excise detained the main front of East Cost Railway Shramik Congress, Berhampur Branch. Thereafter, he called a passerby from the spot namely B. Suraj Acharya and in his presence, gave his identity to the witness as well as the cause of suspicion. On confrontation of Inspector of Excise, the detained persons disclosed their names as M. Sasi Kumar and A. Rahul Kumar. Then, he gave intimation to his superior authority i.e. Dy. Superintendent of Excise Smt. Snehalata Naik over phone and as per her direction he observed all required formalities of search to the accused persons & seizure witness. Thereafter, he searched the jerry pack in presence of witnesses, recovered contraband articles. Then, he conducted all possible test and weightment of the same at the spot and ascertained it to be nothing but ganja. The net weight of contraband articles is total 12.410 Kgs. Thereafter, he seized the same and sealed the seized properties along with the containers by means of paper slips affixing his brass seal impression and handed over the brass seal in the zima of his departmental witness namely ASI Santosh Tripathy. He recorded the statement of accused persons & witnesses u/s.67/53A(A) of NDPS Act separately, arrested the accused persons, forwarded them along with the seized articles to the Hon'ble Sessions Judge-Cum-Special Judge, Ganjam, Berhampur who remanded them to intermediate jail custody. As per direction of the Hon'ble Special Court two samples

A1 and A2 were drawn by the Hon'ble SDJM, Berhampur from which sample A1 was deposited in DECTL, Berhampur for chemical examination test. The other sample A2 and broken seal of I.O. were deposited in Court Malkhana. The rest bulk ganja was kept by the I.O. in his custody as per direction of the Court. After completion of investigation, he submitted final P.R. against the accused persons U/S.20(b)(ii)(B) of N.D.P.S. Act to face their trial in the court of law.

The learned Special Judge, Berhampur finding prima facie case u/s.20(b)(ii)(B) took cognizance of the said offence on 20.06.2025. Accordingly, police papers were supplied to the accused persons and transferred the case record to this court with a direction to dispose of according to law. This court finding prima facie case after hearing both the parties and going through the materials on record framed charge of the offence u/s. 20(b) (ii) (B) of N.D.P.S. Act against the accused persons. Hence, this case.

3. The accused persons took the plea of complete denial of the prosecution allegations and in their statement recorded under Section 313 Cr.P.C., further took the plea of false implication due to language problem.

4. From the factual matrix of the case with the alleged criminal charge U/s.20(b)(ii)(B) of the N.D.P.S. Act, 1985 against the accused persons and the plea of the defence the sole point emerged for determination is - :

Whether on 22.04.2025 at about 11 A.M. near East Cost Railway Shramik Congress, Berhampur Branch near Berhampur Railway Station, the contraband Ganja of 12.410 Kg contained in a jerry basta was seized from the illegal and unauthorised possession of the accused persons while transportation in contravention to Sec.8(c) of N.D.P.S. Act?

5. In order to substantiate the case, the prosecution has examined as many as 3 nos. of witnesses and exhibited 17 nos. of documents and 3 nos. of material objects. P.W.1 is the ASI of Excise who is a member of the raiding party, P.W.2 is the Inspector of Excise-cum-informant and investigating officer and P.W.3 is an independent witness to the search and seizure of the contraband article of this case. On the other hand, the defence has neither adduced any evidence from its side nor exhibited any document.

6. The learned defence counsel first of all contended during argument that the mandatory requirement of Sec. 42(2) of N.D.P.S. Act having not been complied, the prosecution case has to fail. It is further contended that the mandatory provisions of Sec. 57 and 52(A)(2)(c) of the NDPS Act was also not at all complied. It is also argued that the independent witness examined in this case has not supported the prosecution case. The prosecution has failed to establish through cogent and clinching evidence that the articles were properly sealed at the spot and kept in safe custody before its production before the Court and that the articles which were produced in the Court were the very

articles which were seized in this case, so as to rule out the possibility of tampering. The bulk ganja was not produced during trial of the case before the court which creates suspicion over the prosecution case. So, the learned defence counsel prays to acquit the accused persons from the charge levelled against them.

On the other hand, the learned Spl. P.P. objected to the submission of the learned defence counsel and submitted that the mandatory provisions of the NDPS Act is fully complied by P.W.2. He also contended that the contraband article was recovered from the conscious possession of the accused persons which is well proved by the witnesses. Lastly it is contended that P.W.2 has properly sealed and seized the contraband article through his brass seal and therefore the prosecution has satisfactorily proved the safe custody of the contraband article. Therefore, the Id. Spl. P.P. prays to convict the accused persons.

7. In view of the submission of both the sides, this court is called upon to analyze the evidence on record. At the outset it is beneficial to clarify that Sec.50 of the N.D.P.S Act is not applicable in this case as the recovery of the contraband article was not from the personal possession of the accused persons. In *State of Haryana Vs. Ranbir @ Rana AIR 2006 S.C 1796*, so also in *State of Himanchal Pradesh Vs. Paban Kumar (2005) 4 SCC 350*, it was held that “Sec.50 would be applicable only in a case of personal search of the accused and not when it is made in respect of some baggage like a

bag, article, vehicle or container etc., which the accused was carrying at the relevant time". Here, as per the prosecution case the recovery of contraband article was made from a jerry basta carried by the accused persons by their hands. Therefore, as per the version of P.W.2 there is no requirement of the compliance of Sec.50 of the NDPS Act as the search of an article which was being carried by persons in their hand. But, P.W.2 himself during course of his evidence also deposed that he intimated the Superintendent of Excise u/s.50(6) of the NDPS Act to search the suspected persons vide Ext.P-5 & Ext.P-6 where he proved his signatures vide Ext.P-5¹ & Ext.P-6¹ respectively over it. During course of cross-examination, P.W.2 disclosed that the spot is a busy crowded place but they failed to procure local witness to witness the search and seizure as they refused. It is to be noted here that accused has a right to be made aware that he has a right to be searched before a Magistrate or a Gazetted Officer u/s.50(1) of the NDPS Act. No evidence on record shows that the accused persons were communicated of their right. However, if a notice u/s.50(6) of the Act was served the same must be communicated to the accused persons on the ground of urgency in presence of two independent and respectable person. The evidence of P.W.1 reveals that the Inspector Sri Arjun Mallik called one passerby and requested him to be an independent witness to the search of the jerry basta of the suspected persons. That person agreed to be a witness. Inspector asked the suspected persons to be searched by him or before a Magistrate but both of them replied to be

searched by him. Then, the Inspector searched the jerry basta from which smell of ganja was emitting. As per P.W.2, as per his request no people from the gathering agreed to be witness during search of the suspected persons except P.W.3. Immediately, he disclosed his identity to the witness and suspected persons and asked the identity of the suspected persons. The behaviour and conduct of the suspected persons at that time firmly believe him that they might possess some contraband articles and also the smell of contraband emitting from the jerry basta. On being asked both the suspected persons remained silent for a while and then both of them agreed that the jerry basta contained ganaj. He immediately intimated the fact through his cell phone to his immediate superior officer, Smt. Snehalata Nayak, Deputy Superintendent of Excise, Berhampur who directed him to carry out search and seizure as per law. Without affording any opportunity to escape or conceal he immediately prepared the grounds of belief U/s.50(6) of the NDPS Act and took the signature of the suspected persons vide Ext.P-5² & Ext.P-6² respectively. The independent witness (P.W.3) did not whisper about any search and seizure by P.W.2 in his presence from the suspected persons. In view of such fact, it is ascertained that though P.W.2 prepared the grounds of belief U/s.50(6) of the Act but not searched the persons of the suspected persons rather, searched the jerry basta carried by them in their hands. Therefore, the compliance of Sec.50 of NDPS Act would not be attracted in the present fact of the case.

8. During course of argument the ld. Defence counsel argued that the mandatory provisions of sec.42(2) of NDPS Act was not complied for which the trial is vitiated. Sec.42(1) of the NDPS Act mandates that if the empowered officer has reason to believe, either from his personal knowledge or from information given by any person about commission of any offence in respect of any narcotic drug or psychotropic substance, he has to record it in writing. Sec.42(2) makes it mandatory for the officer taking down any such information in writing under Sub-Section-1 or recording grounds of his belief under the proviso thereto, to send a copy thereof to his immediate official superior within 72 hours. In the case of **Karnail Singh Vrs. State of Haryana (2009) 44 OCR (SC) - 183**, a Constitutional Bench the Hon'ble Supreme Court held as follows ;

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

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

(c) In other words, the compliance with the requirements of sections 42(1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances

involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is, after the search, entry and seizure. The question is one of urgency and expediency.

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

In State of Punjab v. Balbir Singh, (1994) 3 SCC 299, the Hon’ble Court at para-21 observed that -

“Under Section 42(1), the empowered officer if has a prior information given by any person, that should necessarily be taken down in writing. But if he has reason to believe from personal knowledge that offences under Chapter IV have been committed or materials which may furnish evidence of commission of such offences are concealed in any building etc, he may carry out the arrest or search without a warrant between sunrise and sunset and this provision does not mandate to Section 42(1), if such officer has to carry out such search between sunset and sunrise, he must record the grounds of his belief.

To this extent, these provisions are mandatory and contravention of the same would affect the prosecution case and vitiate the trial.

Under Section 42(2), such empowered officer who takes down any information in writing or records the grounds under proviso to Section 42(1) should forthwith

send a copy thereof to his immediate official superior. If there is total non-compliance of this provision, the same affects the prosecution case. To that extent, it is mandatory. But if there is delay whether it was undue or whether the same has been explained or not, will be a question of fact in each case."

The present case is not based on any prior information about the transportation of ganja. The evidence of the official witnesses both P.Ws.1 & 2 reveals that on 22.04.2025 while they were performing patrolling duty in department vehicle bearing Regd. No.OD-02BU-8605 at Berhampur Railway Station and its nearby areas for illegal transportation of liquor or narcotic items noticed two suspected persons were coming from Railway Level Crossing i.e. Ramnagar towards Berhampur Railway Station in a suspicious manner carrying white colour jerry basta having some contraband articles holding on their both hands. As per P.W.2 without affording any opportunity to escape or conceal, he immediately proceeded near them and detained them in front of East Coast Railway Shramika Congress East Coast Branch, Berhampur. Both P.Ws.1 & 2 disclosed during trial that the spot where the suspected persons were detained is a crowded place and people gathered near them but on being requested by P.W.2 except P.W.3 nobody come forward to be a witness to the search and seizure of the suspected persons. After ascertaining the identity of the suspected persons P.W.2 intimated the fact over his cell phone to his immediate superior authority as stated in the above paragraph and prepared the grounds of belief. From the evidence of both the witnesses P.Ws.1 & 2, I am unable to accept the submission made by the ld. Counsel for the

accused persons that Sec.42 is attracted to the fact of the present case. In state of **Punjab Vs. Baldev Singh, (1999) 6 SCC 172** the Hon'ble Constitution Bench of the Apex Court through Hon'ble Chief Justice, held :- *“the material difference between the provisions of Sec.43 & 42 is that whereas Sec.42 requires recording of reasons for belief and for taking down of information received in writing with regard to the commission of an offence before conducting search and seizure, Sec.43 does not contain any such provision and as such while acting under Sec.43 of the Act, the empowered officer has the power of seizure of the article etc. and arrest of a person who is found to be in possession of any Narcotic Drug or Psychotropic Substances in a public place where such possession appears to him to be unlawful”*.

Here in the present case, the accused persons were detained by the excise patrolling party in front of the East Coast Railway, Shramika Congress, East Coast Branch, Berhampur near Berhampur Railway Station which is a busy crowded place and accessible to public and fell within the ambit of the phrase “public place” in the explanation to Sec.43 of NDPS Act. So, Sec.42 of NDPS Act had no application. Therefore, as there is no prior information and the accused persons were detained during the performance of patrolling duty by P.Ws.1 & 2 with other staff the compliance of Sec.42 of the act is not attracted. No recording of reason to belief by P.W.2 is necessary prior to search and seizure of the accused persons as per the mandate of Sec.43 of the Act. Hence, the contention of the Id. Counsel for the accused persons is declined in that respect.

9. During argument the ld. counsel disputed the search, seizure of the contraband from the possession of the accused persons with chain of custody, transportation and production before the Court till sample produced for chemical examination test. During course of evidence both P.Ws.1 & 2 deposed that in presence of P.W.3, P.W.2 searched the jerry basta. P.W.2 drew small sample from the basta and from rubbing burning and smelling with his departmental experience he could ascertained the contents of the basta recovered to be Ganja. So, P.W.2 prepared the drug testing chart at the spot marked Ext.P-8 where he proved his signature vide Ext.P-8¹ and the signature of the accused persons Ext.P-8² & Ext.P-8³ respectively over it. On weighing the basta by means of electronic weighing machine, the weight of Ganja came to be 12.410 gram and the empty basta weighed 170 grams. The accused persons could not produce any license in support of their possession for which he seized the Ganja in the basta by preparing seizure list marked Ext.P-9 where he proved his signature marked Ext.P-9¹ and the signature of the accused persons marked Ext.P-9² & Ext.P-9³ respectively over it. On perusal of the contents of the seizure list vide Ext.P-9, it is mentioned therein that on 22.04.2025 at about 11 A.M. the accused persons were detained on suspicion and one white colour jerry basta containing suspected contraband was seized from the personal possession of accused persons in presence of independent witness (P.W.3) and departmental witnesses. As stated above P.W.3 whispered nothing about the search and seizure from

the possession of the accused persons in his presence on 22.04.2025. It is noted in the contents of the seizure list that both the accused persons belong to the State of Tamilnadu and unable to understand Odia language for which when the search and seizure was communicated to them in English Language both of them able to understand some of it and that the independent witness, P.W.3 also translated the version of P.W.2 in the language understandable by the accused persons. Though the independent witness, P.W.3 has not supported the version of official witnesses but admitted that about 7 to 8 months back when he had been to Berhampur Railway Station to leave his brother-in-law, at that time one Sir asked him to sign in a blank paper and accordingly he admitted his signatures marked Ext.P-1⁵, Ext.P-2⁵, Ext.P-4⁵, Ext.P-6³, Ext.P-7⁴, Ext.P-8⁴, Ext.P-9⁴, Ext.P-10⁴, Ext.P-11³, Ext.P-12³ and Ext.P-14⁴ on various documents.

As argued by the Id. Counsel, it is to be noted by this Court that the searches under the NDPS Act by virtue of Sec.51 of the Act have to be carried under the provisions of CrPC particularly sections 100 & 165. By referring the provision of Sec.165 Cr.P.C. the Id. Counsel submitted that recording of grounds of belief is obligatory prior to search and seizure and failure to do so will vitiate the trial. The evidence of P.W.2 reveals after detaining the suspected persons when he requested the people gathered at the spot they refused to be witness during search. Those people also did not disclose their names to him but out of such gathering only P.W.3 agreed to be a witness to the search and seizure.

Accordingly, he gave his identity and ascertained the identity of the suspected persons in presence of that witness. The accused persons could not give satisfactory answer regarding the contents of the jerry basta held by them from which ganja smell was emitting. As per him both the accused was holding the jerry basta from its both hand by their right hand and left hand respectively. This fact is well corroborated by the evidence of P.W.1 who during his cross-examination clarified that out of the crowd proceeding towards the Berhampur Railway Station, P.W.3 detained the accused persons who hold the jerry basta from its both ends. He also stated the same fact that when P.W.3 asked the people to be witness the search and seizure, they denied except P.W.3. Both the witnesses stated the same fact that P.W.2 collected a small quantity by opening the jerry basta and tested it after which ascertained the same to be nothing but contraband ganja. The version of both the witnesses also supported with the drug testing chart under Ext.P-8. Both the official witnesses deposed the same fact that the contraband ganja was weighed in electronic weighing machine and its weight 12.410 grams. Both the witnesses also well supported from the weightment chart marked Ext.P-7. P.W.1 supported the version of P.W.2 that both the accused persons could not produce any authority to possess ganja. So, P.W.2 seized the jerry basta with ganja under seizure list marked Ext.P-9. After sealing the contraband ganja in the jerry basta P.W.2 put paper slip with lac and his specimen brass seal over the basta and prepared the specimen brass seal impression in a plain paper already

marked Ext.P-1 with signature of witnesses. Thereafter, he handed over the personal brass seal in the zima of P.W.1 directing him to produce before the court as and when required by executing zimanama already marked Ext.P-2 with signature of P.W.1 and accused persons. P.W.2 obtained the signature of the accused persons in the back of the seizure list along with witnesses. He also handed over one copy of the seizure list to both the accused persons. The statements of the accused persons are recorded. As per P.W.2 both the accused during examination confessed to get easy money by doing ganja business jointly. So, he arrested both of them and intimidated their respective family members about the grounds of arrest. He prepared the rough sketch map of the spot under Ext.P-10 with signature of accused persons and witnesses. Thereafter, they were brought to City Hospital, Berhampur and after medical examination produced before the Special Court with a prayer to collect sample ganja. As per the direction of the Spl. Court the Id. SDJM, Berhampur collected two sample packets of ganja each containing 50 grams marked A1 & A2 respectively and directed to deposit the sample A1 before DECTL, Berhampur for chemical examination test and to deposit the sample A2 with broken seal of P.W.2 before the court malkhana. P.W.2 was directed to keep the rest of the bulk ganja in excise malkhana marked A. P.W.1 was authorized by the Id. SDJM, Berhampur and commanded by P.W.2 to deposit the sample A1 before DECTL, Berhampur for chemical examination test. On careful scrutiny of the record of Id. SDJM, Berhampur vide

its order dt.22.04.2025 it reveals that as per the direction of Id. Special Judge, Ganjam at Berhampur, P.W.2 produced one jerry sack containing bulk weight of 12.410 gram contraband ganja (excluding jerry sack) under his personal seal. The Id. Court found the seal of the I.O. was intact. The seal was broken before him in presence of the I.O. and out of the seized property two samples of 50 grams each marked A1 & A2 under his official seal were collected. The rest of the bulk ganja kept in the jerry basta again resealed under the seal of the Court. The sample A1 along with a forwarding copy is handed over to P.W.1 with a direction to deposit before DECTL, Berhampur without delay. The broken seal of the I.O. kept in a sealed packet under the seal of the Court and the same was handed over to the I.O. The order-sheet dt.22.04.2025 of the Id. Special Judge, Berhampur further reveals that the I.O. prayed for disposal of the rest bulk ganja after drawl of sample as per Sec.52(A) of the NDPS Act. As C.E. Report was not received the same held to be premature one and directed to do so after receipt of C.E. Report. The Id. SDJM was directed to certify the inventory of the articles produced before him and to furnish certificate which shall be part of the case record for future reference. As per P.W.2 he prepared the inventory list of contraband ganja under Ext.P-14 with his signature marked Ext.P-14¹ and the signature of the accused persons marked Ext.P-14² & Ext.P-14³ respectively over it. The authorization letter of Id. SDJM, Berhampur in favour of P.W.1 marked Ext.P-3. On perusal of the contents of Ext.P-14 it was found to be prepared on the

very day of seizure on 22.04.2025 which is well proved from the initial with seal of the Id. Special Judge, Berhampur. Though, P.W.3 stated that the rest of the bulk ganja marked Ext.A is still in his custody in excise malkhana and he has not prayed for his destruction yet and further stated that he has not applied before the Id. SDJM, Berhampur to obtain the genuineness of the seized ganja as per inventory list Ext.P-14 but surprisingly on careful scrutiny of the record of the Id. SDJM, Berhampur, it is ascertained that P.W.14 prayed for drawing sample and disposal of the rest of the ganja for which Id. SDJM certified the inventory list, sample drawn, photographs and video taken of the contraband in his presence on the very day of 22.04.2025. P.W.1 supported the version of P.W.2 that he was directed by the Id. Court of SDJM, Berhampur to deposit the sample ganja before DECTL, Berhampur for chemical examination test and to deposit the broken seal in the court malkhana. He proved the authorization of Id. SDJM marked Ext.P-3 with his signature marked Ext.P-3¹ over it. He also kept the personal brass seal of P.W.2 with his signature in a closed envelope marked M.O.I without objection from the defence. From the evidence of both P.Ws.1 & 2, it is ascertained that on 22.04.2025 at about 11 A.M. during the course of patrolling duty near Berhampur Railway Station both the accused persons were detained, search and seizure of contraband was made from their exclusive and conscious possession as they could not produce any authority to transport it. It is also well supported from the duty chart prepared by P.W.2 marked under Ext.P-

13 comprised of P.W.1 and other excise staffs. The specimen brass seal under Ext.P-1 was duly verified by the Id. SDJM while drawing samples from the bulk ganja marked A. That apart the chemical examination test report under Ext.P-17 shows that the sample marked Ext.A1 weighing 50 grams was received at the laboratory on 22.04.2025 in sealed condition with specimen brass seal impression of the forwarding court with the forwarding memo. After examination the sample A1 is found to be ganja (cannabis) as defined under the NDPS Act. It is also proved from the evidence of P.W.2 that on 23.04.2025 he submitted preliminary report (C-4 form) regarding search, seizure and arrest of the accused persons vide DB No.276 dt.23.04.2025 to his immediate higher authority under Ext.P-15. On perusal of the said Ext.P-15 it is ascertained that the detailed report as per Sec.57 of the Act was duly dispatched to the higher authority on 23.04.2025 which was duly received by the Dy. Superintendent of Excise, Berhampur which reveals from the endorsement. P.W.2 also dispatched the week ending diary vide GL No.48 DB No.285 dt.27.04.2025 to his immediate higher authority and received back under Ext.P-16. In such facts and circumstances it appears that P.W.2 has duly followed the procedures enshrined under Sec.57 of the NDPS Act and followed the procedures of search, seizure and arrest.

During course of cross-examination, P.W.2 is testified that he has not called any local inhabitants to witness the search and seizure as mandated under Sec.100(4) of CrPC. Admittedly, P.W.2 has not taken any pain to request

the local shopkeepers or government officials near by the spot to be a witness to the search and seizure. In that regard, with reference to the case in **State of Punjab Vs. Balbir Singh** the Hon'ble Apex Court held that – *“if a police officer, even if he happens to be an empowered officer while effecting an arrest or search during normal investigation into offences purely under the provisions of Cr.P.C. fails to strictly comply the provision of Sec.100 or 165 Cr.P.C. including the requirement to record reasons, such failure would only amount to an irregularity”*. The Hon'ble Apex Court also observed that the empowered officer though is expected to record reasons of belief as required u/s.165, failure to do so cannot vitiate the trial particularly when Sec.41 or 42 do not mandate to record reasons while making a search. Sec.165 in the context has to be read along with sec.41(2) and 42(1) where under he is not required to record his reasons. As discussed in the above paragraph no grounds of belief is also required to be recorded while proceeding u/s.43 of the Act. So, the contention of the Id. Defence Counsel in that regard hold not good. The prosecution has ably proved that the contraband ganja was recovered and seized from the exclusive and conscious possession of the accused persons at the relevant time and place.

10. The Hon'ble Court in the case of **Balbir Singh** Cited Supra also held that – *“the provisions of Sec.52 & 57 of the Act which deals with the steps to be taken by the officers after making arrest or seizure u/s.41 to 44 are by themselves not mandatory. If there is non-compliance or if there are*

lapses like delay etc. then the same has been examine to see whether any prejudice has been caused to the accused and such failure will have a bearing on the appreciation of evidence regarding arrest or seizure as well as on merit of the case". In the present case, it is the finding that during course of patrolling duty by P.Ws.1 & 2 with other staffs the accused persons were caught red handed with the contraband ganja. The defence has not taken any plea of probable circumstance in falsely implicating them in this case except language problem. As stated above, the accused persons could able to understand English language partially communicated to them and through the independent witness (P.W.3) in Telugu language. It is already proved by the prosecution about the genuinity of the seized bulk ganja as per the inventory prepared by P.W.2 under Ext.P-14. Though the prosecution failed to produce the photographs and the video recording taken by the Id. SDJM, Berhampur but successfully proved the inventory list of the contraband articles which substantially complied the mandate u/s.52(A) of the NDPS Act. That apart, there is no contradiction or inconsistency found in the evidence of official witnesses like P.Ws.1 & 2 towards the search, recover and arrest of the accused persons in connection to the seized contraband. In such facts and circumstances, the non-production of the seized bulk ganja during trial will no way helpful to the defence. The Hon'ble Supreme Court of India in **Kallu Khan Vs. State of Rajasthan in Crl. Appeal No.1605 of 2021** held that – *"when the seizure of material is proved on record and*

is not even disputed, the entire contraband material need not be placed on record. It is not a case in which the appellant has proved beyond reasonable doubt that while sending the samples for forensic tests, seals were not intact or the procedure has been materially not followed by protecting the seized substance or was not stored properly, as specified in the case of Mohanlal in which case the directions were given to be followed on administrative side". In the said case the Hon'ble Supreme Court by referring in the case of **Than Kumar Vs. State of Haryana, (2020) 5 SCC 260**, the Hon'ble Court observed that *if seizure is otherwise proved and the samples taken from and out of contraband material were kept intact; the report of forensic expert shows potency, nature and quality of contraband material, essential ingredients constituting offence are made out and the non-production of the contraband in the court is not fatal.* The Hon'ble Apex Court in the case of **Balbir Singh Vs. State of Punjab** cited Supra also observed that – *merely because independent witnesses were not examined, the conclusion could not be drawn that the accused was falsely implicated.* In the present fact of the case the evidence of both the official witnesses P.Ws.1 & 2 are found to be cogent, clear, trustworthy and beyond reproach. The production of broken seal under M.O.II and sample A2 under M.O.III are prima facie evidence of seizure of the contraband articles from the possession of the accused persons. Therefore, the prosecution has successfully proved through both oral and documentary evidence that the compliance of the provisions of the NDPS

Act is well carried out and the accused persons are no way got prejudiced due to the non-compliance of any of the provisions of the act. In such premises, the non-compliance of substantial part of Sec.52(A) of the Act will no way give any prejudice to the accused persons when the prosecution has successfully proved the seizure of the contraband ganja on their exclusive and conscious possession on 22.04.2025 near Berhampur Railway Station. Hence, both the accused persons are liable for the illegal possession of the contraband ganja without having any license or authority. So, the prosecution has successfully proved the charge u/s.20(b)(ii)(B) of the NDPS Act, 1985 against the accused persons beyond all reasonable doubt.

Resultantly, this Court finds the accused persons guilty for the offence U/s.20(b)(ii)(B) of the N.D.P.S. Act, 1985 and convict them for committing such offence thereunder as per the provision U/s.235(2) of Cr.P.C.

The probation of Offenders Act, 1958 is not applicable in this case.

Sd/- N. Mohanty

**1stAddl. Sessions-cum-
Special Judge (NDPS), Berhampur.**

HEARING ON THE QUESTION OF SENTENCE

11. Heard, the convicts in presence of the learned Defence Counsels, Berhampur and the learned Special P.P. The learned counsels for the convicts pray the Court to take a liberal view while imposing the sentence with submission that

the convicts are young first offenders having dependent, belongs to poor family with bright future and prays to take lenient view while imposing sentence.

The learned Special P.P. urged that convicts in a highly organized manner were transporting ganja. Hence, adequate sentence should be imposed.

The menace of drug trafficking escalating on steep rise and its turbulent impact on the society at large, especially the younger generation contributing to rise the crime graph of the country. The prosecution has not furnished the criminal antecedent records of the convicts as proof of their prior involvements in similar case. Hence, taking into consideration the quantum of ganja seized from the conscious possession of the accused persons and their prior non-involvement in transportation of ganja along with their younger age, this Court is inclined to sentence the convicts to **undergo rigorous imprisonment for Three (03) Years and to pay a fine of ₹.10,000/- (Rupees Ten Thousand) each and in default to undergo further rigorous imprisonment for Three (3) Months for the offence U/s.20(b)(ii)(B) of the N.D.P.S. Act.** The period of detention be set off the substantive sentence as per the provision of Section 428 Cr.P.C.

12. The zimanama vide Ext.P-2 be cancelled, the M.O.I be returned to its lawful owner, other seized articles, if any, including the M.Os.II & III be destroyed, four months after the appeal period is over, if no appeal is preferred. But

in case of an appeal, the same shall be dealt with as per the direction of the Hon'ble Appellate Court.

Sd/- N. Mohanty

1st Addl. Sessions-cum-Special Judge, Berhampur.

The judgment is typed to my dictation by the Stenographer attached to this court directly on the computer, corrected by me and the same is pronounced in the open Court today, this the 15th day of July, 2026 under my signature and seal of this Court in presence of the accused persons.

Sd/- N. Mohanty

1st Addl. Sessions-cum-Special Judge, Berhampur.

List of witnesses examined on behalf of the prosecution.		
P.W.1	Santosh Kumar Tripathy	Excise witness
P.W.2	Arjun Mallik	Informant-cum-IO
P.W.3	B. Suraj Achary	Other witness

List of witnesses examined on behalf of the Defence		
NONE		

List of documents marked on behalf of the Prosecution		
1	Ext.P-1	Specimen Paper Slip
2	Ext.P-1 ¹	Signature of P.W.1 on Ext.P-1
3	Ext.P-2	Brass Seal Zimanama
4	Ext.P-2 ¹	Signature of P.W.1 on Ext.P-2
5	Ext.P-3	Authorization Letter
6	Ext.P-3 ¹	Signature of P.W.1 on Ext.P-3
7	Ext.P-4	Inventory List relating to excise kit
8	Ext.P-4 ¹	Signature of P.W.2 on Ext.P-4
9	Ext.P-4 ²	Signature of accused M. Sasi Kumar on Ext.P-4

10	Ext.P-4 ³	Signature of accused A. Rahul Kumar on Ext.P-4
11	Ext.P-4 ⁴	Signature of witness S.K. Tripathy on Ext.P-4
12	Ext.P-4 ⁵	Signature of witness B. Suraj on Ext.P-4
13	Ext.P-5	Grounds of Belief of accused M. Sasi Kumar
14	Ext.P-5 ¹	Signature of P.W.2 on Ext.P-5
15	Ext.P-5 ²	Signature of accused on Ext.P-5
16	Ext.P-5 ³	Signature of witness B. Suraj on Ext.P-5
17	Ext.P-5 ⁴	Signature of witness S.K. Tripathy on Ext.P-5
18	Ext.P-6	Grounds of Belief of accused A. Rahul Kumar
19	Ext.P-6 ¹	Signature of P.W.2 on Ext.P-6
20	Ext.P-6 ²	Signature of accused on Ext.P-6
21	Ext.P-6 ³	Signature of witness B. Suraj on Ext.P-6
22	Ext.P-6 ⁴	Signature of witness S.K. Tripathy on Ext.P-6
23	Ext.P-7	Weighment Chart
24	Ext.P-7 ¹	Signature of P.W.2 on Ext.P-7
25	Ext.P-7 ²	Signature of accused M. Sasi Kumar on Ext.P-7
26	Ext.P-7 ³	Signature of accused A. Rahul Kumar on Ext.P-7
27	Ext.P-7 ⁴	Signature of witness B. Suraj on Ext.P-7
28	Ext.P-7 ⁵	Signature of witness S.K. Tripathy on Ext.P-7
29	Ext.P-8	Drug Testing Chart
30	Ext.P-8 ¹	Signature of P.W.2 on Ext.P-8
31	Ext.P-8 ²	Signature of accused M. Sasi Kumar on Ext.P-8
32	Ext.P-8 ³	Signature of accused A. Rahul Kumar on Ext.P-8
33	Ext.P-8 ⁴	Signature of witness B. Suraj on Ext.P-8
34	Ext.P-8 ⁵	Signature of witness S.K. Tripathy on Ext.P-8
35	Ext.P-9	Seizure List (Ganja)
36	Ext.P-9 ¹	Signature of P.W.2 on Ext.P-9
37	Ext.P-9 ²	Signature of accused M. Sasi Kumar on Ext.P-9

38	Ext.P-9 ³	Signature of accused A. Rahul Kumar on Ext.P-9
39	Ext.P-9 ⁴	Signature of witness B. Suraj on Ext.P-9
40	Ext.P-9 ⁵	Signature of witness S.K. Tripathy on Ext.P-9
41	Ext.P-2 ²	Signature of P.W.2 on Ext.P-2
42	Ext.P-2 ³	Signature of accused M. Sasi Kumar on Ext.P-2
43	Ext.P-2 ⁴	Signature of accused A. Rahul Kumar on Ext.P-2
44	Ext.P-2 ⁵	Signature of witness B. Suraj on Ext.P-2
45	Ext.P-10	Spot Map
46	Ext.P-10 ¹	Signature of P.W.2 on Ext.P-10
47	Ext.P-10 ²	Signature of accused M. Sasi Kumar on Ext.P-10
48	Ext.P-10 ³	Signature of accused A. Rahul Kumar on Ext.P-10
49	Ext.P-10 ⁴	Signature of witness B. Suraj on Ext.P-10
50	Ext.P-10 ⁵	Signature of witness S.K. Tripathy on Ext.P-10
51	Ext.P-11	Arrest Memo of M. Sasi Kumar
52	Ext.P-11 ¹	Signature of P.W.2 on Ext.P-11
53	Ext.P-11 ²	Signature of accused M. Sasi Kumar on Ext.P-11
54	Ext.P-11 ³	Signature of witness B. Suraj on Ext.P-11
55	Ext.P-11 ⁴	Signature of witness S.K. Tripathy on Ext.P-11
56	Ext.P-12	Arrest Memo of A. Rahul Kumar
57	Ext.P-12 ¹	Signature of P.W.2 on Ext.P-12
58	Ext.P-12 ²	Signature of accused A. Rahul Kumar on Ext.P-12
59	Ext.P-12 ³	Signature of witness B. Suraj on Ext.P-12
60	Ext.P-12 ⁴	Signature of witness S.K. Tripathy on Ext.P-12
61	Ext.P-13	Duty Chart
62	Ext.P-13 ¹	Signature of P.W.2 on Ext.P-13
63	Ext.P-1 ²	Signature of P.W.2 on Ext.P-1
64	Ext.P-1 ³	Signature of accused M. Sasi Kumar on

		Ext.P-1
65	Ext.P-1 ⁴	Signature of accused A. Rahul Kumar on Ext.P-1
66	Ext.P-1 ⁵	Signature of witness B. Suraj on Ext.P-1
67	Ext.P-14	Inventory List (seized articles)
68	Ext.P-14 ¹	Signature of P.W.2 on Ext.P-14
69	Ext.P-14 ²	Signature of accused M. Sasi Kumar on Ext.P-14
70	Ext.P-14 ³	Signature of accused A. Rahul Kumar on Ext.P-14
71	Ext.P-14 ⁴	Signature of witness B. Suraj on Ext.P-14
72	Ext.P-14 ⁵	Signature of witness S.K. Tripathy on Ext.P-14
73	Ext.P-15	Preliminary Report (C-4 Form)
74	Ext.P-16	GL 48 Letter from Superintendent of Excise
75	Ext.P-14 ¹	Signature of Superintendent of Excise
76	Ext.P-14 ²	Signature of P.W.2 on Ext.P-16
77	Ext.P-17	Chemical Examination Report

List of documents marked on Court

Nil.

List of documents marked for the Defence
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Nil.

List of M.O.s marked on behalf of the Prosecution

1	M.O.I	Envelope containing Brass seal
2	M.O.II	Envelope relating broken seal
3	M.O.III	Envelope containing duplicate sample

List of M.O.s marked for the Defence

Nil.

Sd/- N. Mohanty
**1st Addl. Sessions-Cum-
Special Judge, Berhampur.**