



2026:CGHC:4548

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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 305 of 2024

**1 - Anurag Singh S/o Mahendra Singh Aged About 29 Years R/o Village
Post Lediaryi, P.S. Khiri, Distt. Prayagraj, U.P.**

--- Appellant(s)

versus

**1 - State Of Chhattisgarh Through Station House Officer, P.S.
Nagarnar, Distt. Bastar, C.G.**

--- Respondent(s)

CRA No. 339 of 2024

**1 - Shekhar Singh S/o Vijay Bahadur Singh Aged About 29 Years R/o
Village Post Lediaryi, Police Station Khiri, District Prayagraj (U.P.)**

**2 - Maqsud Khan S/o Abbas Khan Aged About 36 Years R/o Village
Dihikhurd, Post Lediaryi, Police Station Khiri District Prayagraj (U.P.)**

---Appellant(s)

Versus

**1 - State Of Chhattisgarh Through The Station House Officer, Police
Station Nagarnar, District : Bastar(Jagdalpur), Chhattisgarh**

--- Respondent(s)



For Appellant(s)	:	Shri Mahendra Dubey, Advocate and Shri Samrath Singh Marhas, Advocate for the appellants.
For Respondent/State	:	Shri Rishi Raj Pithawa, Dy.GA

(Hon'ble Shri Justice Arvind Kumar Verma)

Judgment on Board

23/01/2026

Since these two appeals arise out of the same judgment and order dated 24.01.2024 passed by the learned Special Judge (NDPS), Bastar at Jagdalpur in Special Criminal Case (NDPS Act) No. 07/2023, and as the facts and questions of law involved in both the appeals are common, they were heard together and are being disposed of by this common judgment.

2. These appeals have been preferred under Section 374(2) of the Code of Criminal Procedure, 1973, assailing the legality, propriety and correctness of the judgment of conviction and order of sentence dated 24.01.2024, whereby the appellants have been convicted for the offence punishable under Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the NDPS Act") and sentenced to undergo rigorous imprisonment for ten years with fine of Rs.1,00,000/- each, and in default of payment of fine, to further undergo rigorous imprisonment for one year.

3. According to the prosecution, on 20.09.2022 at about 13:20 hours, the Assistant Sub-Inspector of Police Station Nagarnar received



secret information from an informant that three persons were transporting illegal contraband ganja in a Ford car bearing registration No. UP-70-AW-0571 from the State of Odisha towards Jagdalpur. It is alleged that the said information was recorded in the rojnamcha and communicated to superior officers. Thereafter, a police party consisting of the Station House Officer, investigating staff and seizure witnesses proceeded towards the indicated place. At about 21:30 hours on the same day, the police party intercepted the said vehicle near Village Dhanpunji, Forest Naka, NH-63 Main Road, Police Station Nagarnar, District Bastar.

4. The prosecution case further alleges that after stopping the vehicle, the police informed the occupants about the purpose of interception and conducted search of the vehicle. During search, the police allegedly recovered several packets containing ganja from the vehicle. The total weight of the seized contraband was stated to be about 30 kilograms. A seizure memo and panchnama were prepared in the presence of witnesses. The appellants and a co-accused were arrested on the spot. Samples were allegedly drawn from the seized contraband and sent for chemical examination. After completion of investigation, a charge-sheet was filed against the appellants for the offence punishable under Section 20(b)(ii)(C) of the NDPS Act.

5. The learned trial court framed charges against the appellants. During trial, the prosecution examined 13 witnesses including police officials and seizure witnesses. The appellants denied the allegations in



their statements under Section 313 of Cr.P.C. and pleaded false implication.

6. Upon appreciation of evidence, the learned trial court convicted and sentenced the appellants as stated above. Hence, the present appeals.

7. Learned counsel for the appellants submits that the very foundation of the prosecution case is doubtful and fabricated. It was argued that the Dehati Nalisi (Ex.-P/40) which is ordinarily prepared at the spot at the first instance of detection of crime, appears to have been prepared subsequently at the police station after arrest of the accused and seizure of contraband. It was pointed out that the Dehati Nalisi itself mentions the arrest time of the accused persons, namely, Anurag Singh, Shekhar Singh and Maqsud Khan, as 22:50, 23:10 and 23:30 hours on 20.09.2022, which facts could not have been incorporated in the Dehati Nalisi prior to registration of FIR.

8. Learned counsel for the appellants further drew attention to the arrest memos (Ex.-P/36, Ex.-P/37 and Ex.-P/38), which were prepared at the police station, and the details of which are already incorporated in the Dehati Nalisi. This clearly indicates that the Dehati Nalisi was prepared after arrest and investigation, which is contrary to settled procedure of criminal investigation. It was further submitted that the *Dehati Nalisi* bears the time 00:40 hours on 21.09.2022, whereas the FIR (Exb-P/41) shows registration time as 02:10 hours. These circumstances clearly suggest that the Dehati Nalisi and FIR were



manipulated and fabricated, thereby rendering the prosecution case doubtful and unreliable.

9. Learned counsel for the appellants further submitted that the prosecution has failed to establish safe custody of the seized contraband. It was argued that the contraband was allegedly seized on 20.09.2022 vide seizure memo (Ex.-P/31). The Investigating Officer claims that the seized article was sealed and deposited in the malkhana of Police Station Nagarnar on the same day vide receipt (Ex.-P/42) handed over to Head Constable Amrit Lal Dhruv. However, the prosecution failed to examine Head Constable Amrit Lal Dhruv before the trial court. Moreover, the receipt (Ex.-P/42) does not mention the time of deposit of the seized contraband.

10. Learned counsel for the appellants further referred to Rojnamcha Sanha No. 31 (Ex.-P/54C), which reveals that the Investigating Officer returned to the police station at 01:10 hours on 21.09.2022. This clearly contradicts the prosecution version that the seized contraband was deposited in the malkhana on 20.09.2022. Thus, it was argued that the alleged deposit of contraband on 20.09.2022 is not reliable and trustworthy, and the chain of custody stands broken.

11. Learned counsel further submitted that there is no document in the entire charge-sheet to establish that on which date the seized contraband was taken out from the malkhana for preparation of inventory and sampling. It was pointed out that sampling was allegedly done on 14.12.2022 vide Ex.-P/53 and Ex.-P/53A. However, there is no



document to show when and how the seized contraband was taken out from the malkhana. Even in Ex-P/53A, it is mentioned that after drawing samples A/1 and A/2 (50 grams each) and preparation of inventory, the seized contraband and samples were sent to the police station, but there is no contemporaneous document to show the date and time of receipt of the contraband and samples at the police station and their redeposit in the malkhana. This omission, according to learned counsel, creates serious doubt regarding the sanctity and inviolability of the sampling process.

12. It is next submitted that the Rojnamcha Sanha No. 31 dated 20.09.2022 (Exb-P/54C) mentions that after sampling and preparation of inventory by Nayab Tehsildar Gautam Gore (PW-12) and the samples A/1 and A/2 and remaining contraband were deposited in the malkhana on 20.09.2022. However, PW-2 Devendra Rai, the Investigating Officer, admitted in paragraph 28 of his deposition that after sampling and preparation of inventory, the seized property was deposited in the malkhana on 20.09.2022, but he mentioned that the serial number of Rojnamcha Sanha was 48, whereas the correct serial number is 31. It was further submitted that there is no document numbered 48 in the charge-sheet, which clearly shows inconsistency and manipulation in the prosecution record. He submits that the inventory (Ex-P/53 and Ex-P/53A) does not suggest that the seized contraband and samples were sent to the police station on 20.12.2022, and there is no document to show when the contraband and samples were received and deposited in the malkhana.



These contradictions render the sampling and inventory proceedings doubtful and unreliable.

13. It is submitted that the sample seal (*Namuna Seal*) was not sent to the FSL, which is evident from the "*Kartavya Pramanpatra*" dated 23.12.2022 (Ex-P/44) issued to Constable Vimla Thakur (PW-7). In Ex-P/44, it is specifically mentioned that only sealed parcels of ganja were to be taken to FSL Jagdalpur and brought back. However, the receipt issued by FSL, Jagdalpur dated 23.12.2022 does not mention the receipt of sample seal. Thus, it was argued that in the absence of sample seal, the FSL report cannot be safely relied upon.

14. Learned counsel for the appellants further submits that the sample A/1 of the present case was never deposited in the FSL. It was pointed out that sample A/1 was sent to FSL on 23.12.2022 through Constable Vimla Thakur (PW-7), who carried samples of two crime numbers, namely, Crime No. 179/2022 (present case) and Crime No. 147/2022. PW-7, in paragraph 7 of her deposition, admitted that instead of depositing the sample of Crime No. 179/2022, she deposited the sample of Crime No. 147/2022. Therefore, the FSL report produced before the trial court does not relate to the present case but pertains to Crime No. 147/2022. This admission of PW-7 demolishes the prosecution case and renders the FSL report wholly unreliable. Learned counsel further submitted that there is complete non-compliance of Section 52-A of the NDPS Act.



15. Learned counsel relied upon the decision of the Hon'ble Supreme Court in ***Union of India vs. Mohanlal, reported in (2016) 3 SCC 379***, wherein it has been held that the procedure prescribed under Section 52-A of the NDPS Act is mandatory in nature. It has been observed that immediately after seizure of contraband, the officer concerned is duty-bound to approach the Magistrate for preparation of inventory, drawing of representative samples in the presence of the Magistrate, and certification thereof. The Court further held that the process of drawing samples must be carried out in the presence and under the supervision of the Magistrate and the entire exercise must be duly certified. Relying upon the said judgment, learned counsel for the appellants submitted that in the present case, the procedure prescribed under Section 52-A has not been followed in its true letter and spirit, rendering the sampling process doubtful and unreliable.

16. It was argued that the Investigating Officer mixed all 10 packets (3 kg each) together and put them in a plastic bag, and thereafter PW-12 Nayab Tehsildar Gautam Gore again mixed the entire lot while drawing samples A/1 and A/2. Sampling was neither done in the presence of a Judicial Magistrate nor in the presence of the appellants. It was further submitted that none of the seals used during seizure and sampling was produced before the trial court. PW-12 has admitted in paragraph 6 of his deposition that photographs of the sampling process were not produced before the court and he could not even name the photographer. These facts clearly show gross violation of the mandatory procedure prescribed under Section 52-A of the NDPS Act.



He has placed reliance on the judgment of this Court in ***Bharat Aamble vs. State of Chhattisgarh***, wherein it has been held that where the facts and evidence in the prosecution case are materially different and the mandatory procedure under the NDPS Act is not complied with, the conviction cannot be sustained. It was argued that in the present case also, the prosecution has failed to establish strict compliance of statutory safeguards, and therefore, the conviction deserves to be set aside.

17. He has also relied upon the decision of the Supreme Court reported in ***2025 SCC OnLine SC 110***, wherein the guidelines have been laid down regarding compliance of Section 52-A of the NDPS Act. The Court held that the procedure for sampling and preparation of inventory is not a mere formality, but a substantive safeguard to ensure fairness and authenticity in NDPS prosecutions. Any substantial deviation from the prescribed procedure would seriously affect the credibility of the prosecution case.

18. Learned counsel for the appellants submitted that the cumulative effect of the aforesaid contradictions, manipulations and procedural lapses demolishes the prosecution case. It was argued that the prosecution has failed to establish:

- (i) the genuineness of Dehati Nalisi and FIR,
- (ii) safe custody of seized contraband,
- (iii) continuity of chain of custody,
- (iv) sanctity of sampling and inventory proceedings, authenticity of FSL



report, and

(vi) conscious possession of the appellants.

19. In view of these serious infirmities, the prosecution case becomes highly doubtful and the conviction of the appellants is not sustainable in the eyes of law. Therefore, it was prayed that the appellants be acquitted by extending to them the benefit of doubt. Reliance has been placed on the judgment of the Supreme Court in ***Union of India v. Mohanlal, (2016) 3 SCC 379***, wherein strict compliance of Section 52-A of the NDPS Act was emphasized. On these grounds, it was prayed that the appellants be acquitted by extending the benefit of doubt.

20. Learned counsel further relied upon the decision in ***Surepally Srinivas vs. State of Andhra Pradesh, 2025 SCC OnLine SC 683*** wherein the Supreme Court held that substantial non-compliance of the mandatory provisions of the NDPS Act, particularly with respect to sampling and chain of custody, would vitiate the prosecution case.

21. The Court emphasized that in cases under the NDPS Act, where severe punishment is prescribed, the prosecution must strictly prove compliance of all statutory safeguards beyond reasonable doubt. On the basis of the aforesaid judgments, learned counsel for the appellants contended that:

- (i) strict compliance of Sections 42, 50 and 52-A of the NDPS Act is mandatory;
- (ii) the prosecution must establish an unbroken chain of custody of the



seized contraband;

(iii) sampling must be conducted strictly in accordance with law and in the presence of the Magistrate;

(iv) the authenticity of the FSL report depends upon the sanctity of sampling and sealing; and

(v) any substantial deviation from the prescribed procedure entitles the accused to benefit of doubt. It was, therefore, submitted that in the present case, in view of gross procedural lapses and contradictions in the prosecution evidence, the conviction of the appellants is unsustainable in law and they deserve to be acquitted.

22. Learned counsel appearing for the State opposed the appeals and supported the impugned judgment of conviction and order of sentence passed by the learned Special Judge (NDPS), Bastar at Jagdalpur. It was submitted that the prosecution has successfully proved beyond reasonable doubt that the appellants were found in conscious possession of commercial quantity of contraband ganja, and the recovery was effected from the vehicle in which the appellants were travelling. He contended that the testimonies of official witnesses are consistent, trustworthy and corroborated by documentary evidence. It was argued that mere non-support by independent witnesses does not vitiate the prosecution case, as it is a settled principle of law that conviction can be based on the testimony of police witnesses if their evidence inspires confidence. It was further submitted that the alleged procedural lapses pointed out by the appellants are minor irregularities which do not go to the root of the case. According to the State, the



provisions of Sections 42 and 50 of the NDPS Act were substantially complied with and there is no material to show prejudice caused to the appellants.

23. Learned counsel for the State further argued that the sampling and sealing procedure was duly followed and the FSL report confirms that the seized substance was ganja. It was contended that the chain of custody has been duly established through prosecution evidence and the minor discrepancies in documentary evidence are natural and do not affect the credibility of the prosecution case. It was further argued that the learned trial Court has rightly appreciated the evidence on record and has recorded conviction based on cogent and reliable evidence. Therefore, it was prayed that the appeals be dismissed.

24. A careful scrutiny of the record reveals that the Dehati Nalisi (Ex-P/40), which is supposed to be the earliest version of the occurrence, contains details which could not have existed at the time of its preparation. The Dehati Nalisi mentions the arrest time of the appellants and details of seizure and investigation, which clearly suggests that it was prepared after arrest of the accused and after substantial investigation. This is further corroborated by the arrest memos (Ex-P/36, Ex-P/37 and Ex-P/38). Moreover, the timing of the Dehati Nalisi and the FIR (Ex.-P/41) does not inspire confidence and appears to have been manipulated. The genesis of the prosecution case, therefore, becomes doubtful. It is well settled that when the origin of the prosecution case itself is doubtful, the entire edifice built thereon



becomes shaky.

25. The prosecution claims that the seized contraband was deposited in the malkhana on 20.09.2022 vide receipt (Ex-P/42). However, the prosecution has failed to examine the malkhana in-charge or the Head Constable who allegedly received the seized material.

26. Further, the receipt (Ex-P/42) does not mention the time of deposit. The Rojnamcha Sanha No. 31 (Ex-P/54C) shows that the Investigating Officer returned to the police station at 01:10 hours on 21.09.2022. This circumstance casts serious doubt on the prosecution claim that the seized contraband was deposited in the malkhana on 20.09.2022. Thus, the prosecution has failed to establish safe custody of the seized contraband, resulting in a break in the chain of custody. The sampling process in the present case suffers from serious infirmities. There is no document on record to show on which date the seized contraband was taken out from the *malkhana* for preparation of inventory and sampling. Although the prosecution claims that sampling was conducted on 14.12.2022 vide Ex.-P/53 and Ex.-P/53A, there is no contemporaneous document to establish the movement of seized material from the malkhana. Moreover, the inventory proceedings were not conducted strictly in accordance with Section 52-A of the NDPS Act. The evidence of PW-12 Nayab Tehsildar Gautam Gore shows that the entire contraband was mixed before drawing samples, which is contrary to the prescribed procedure. The seals allegedly used during sampling



were not produced before the trial Court. These infirmities strike at the very root of the sampling process and render the prosecution case doubtful.

27. A crucial witness examined by the prosecution is PW-7 Constable Vimla Thakur, who was entrusted with the responsibility of carrying the seized samples to the Forensic Science Laboratory (FSL), Jagdalpur. In her examination-in-chief, PW-7 stated that on 23.12.2022 she was directed to carry sealed samples of two crime numbers, namely Crime No. 179/2022 (present case) and Crime No. 147/2022, to the FSL, Jagdalpur. However, in her cross-examination, PW-7 made a categorical admission that instead of depositing the sample of Crime No. 179/2022 (present case), she deposited the sample relating to Crime No. 147/2022 (another case). She further admitted that the sample of the present case was not deposited in the FSL. She has deposed that

“6.प्र.ए.1 का सीलबंद का डिब्बा दिया गया था वह कपड़े से सीलबंद किया गया था उसमें थाने की सील लगी हुई थी।
7. यह कहना सही है कि मुझे थाना नगरनार के दो अपराध क्रमांक [147/2022](#) एवं [179/2022](#) के सील बंद प्रदर्श को एफ एस एल कार्यालय में जमा करने दिया गया था। परन्तु यह कहना सही है कि [179/2022](#) का प्रदर्श ए 1 का सीलबंद डिब्बा जमा नहीं की थी उसके स्थान पर [147/2022](#) से संबंधित माल जमा कर दी थी।”

The relevant portion of her testimony clearly demonstrates that the FSL report produced before the learned trial Court does not pertain to the present case. This admission by PW-7 strikes at the very root of



the prosecution case. If the sample sent to the FSL does not belong to the present case, the FSL report loses its evidentiary value and cannot be relied upon to prove that the seized substance in the present case was ganja. Thus, the scientific evidence, which forms the backbone of an NDPS prosecution, stands completely demolished. PW-7 further admitted that the sample seal (Namuna Seal) was not sent along with the sample to the FSL.

28. In NDPS cases, the sample seal plays a vital role in ensuring that the sample examined is the same as the sample seized from the accused. The failure of the prosecution to prove that the sample was sent to the FSL renders the possibility of tampering with the sample highly probable.

29. The evidence of PW-12 Nayab Tehsildar Gautam Gore further reveals that the entire seized contraband was mixed before drawing the samples. Such mixing of contraband before sampling is contrary to the procedure prescribed under Section 52-A of the NDPS Act and Standing Order No. 1/1989. The procedure mandated under law requires that representative samples must be drawn separately from each packet. The mixing of the entire contraband before sampling destroys the individuality of each packet and renders the sampling process unreliable. Thus, the sampling process in the present case is vitiated.

30. The prosecution has failed to establish an unbroken chain of



custody of the seized contraband. Although the prosecution claims that the seized material was deposited in the malkhana on 20.09.2022, the malkhana receipt does not mention the time of deposit. Further, the Rojnamcha Sanha indicates that the Investigating Officer returned to the police station at 01:10 hours on 21.09.2022. This contradiction creates serious doubt regarding the actual time and manner of deposit of the seized contraband. Moreover, there is no documentary evidence to show when the seized contraband was taken out from the malkhana for sampling and when it was returned. Thus, the prosecution has failed to prove safe custody of the seized contraband.

31. The NDPS Act prescribes stringent punishment, and therefore, strict compliance of statutory safeguards is mandatory. In the present case, the cumulative effect of the above infirmities—doubtful origin of prosecution case, break in chain of custody, defective sampling, unreliable FSL report, and failure to prove conscious possession—creates serious doubt regarding the prosecution version.

32. In view of the foregoing discussion, this Court is of the considered opinion that the prosecution has failed to prove the guilt of the appellants beyond reasonable doubt. The evidence on record is replete with material contradictions, procedural lapses and serious infirmities which go to the root of the prosecution case. The mandatory safeguards under the NDPS Act have not been complied with in their true letter and spirit.

33. The sanctity of seizure, sampling and custody of the seized



contraband has not been established. The authenticity of the FSL report is doubtful. The prosecution has failed to prove conscious possession of the appellants over the alleged contraband. In such circumstances, the conviction of the appellants recorded by the learned trial Court cannot be sustained in law.

34. Accordingly, the appeals are **allowed**. The impugned judgment of conviction and order of sentence dated 24.01.2024 passed by the learned Special Judge (NDPS), Bastar at Jagdalpur in Special Criminal Case (NDPS Act) No. 07/2023 are hereby set aside. The appellants are acquitted of the charges under Section 20(b)(ii)(C) of the NDPS Act by extending to them the benefit of doubt. Appellants are reported to be in jail. They shall be set at liberty forthwith if no longer required in any other criminal case.

Sd/-

(Arvind Kumar Verma)
Judge