



GAHC030003712025



REPORTABLE

IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM: NAGALAND: MIZORAM & ARUNACHAL PRADESH)
PRINCIPAL SEAT

Crl. A. 18/2025

Haukhenkhama

S/o Thangkhandawng

R/o Vengthar, Champhai

----- **Appellant/Accused**

– ***VERSUS*** –

The State of Mizoram

-----**Respondent**

Advocate for the appellant:- Mr. Johnny L. Tochhawng

Advocate for the respondent:- Mrs. Vanneihsiami

BEFORE

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

HON'BLE MR. JUSTICE PRANJAL DAS

Date on which judgment is reserved: 23.01.2026

Date of pronouncement of judgment: 25.02.2026

Whether the pronouncement is of the N/A

Operative part of the judgment :

Whether the full judgment has been



Pronounced

:Yes



JUDGMENT & ORDER (CAV)

(Mr. Pranjal Das, J.)

1. Heard Mr. Johny L. Tochhawng, learned counsel for the appellant. Also heard Mrs. Vanneihsiami, learned Addl. Public Prosecutor for the State respondent.
2. The appellant has filed this appeal aggrieved by his conviction and sentence under section 22(C) of NDPS Act, 1985 - vide judgment and order dated 16.04.2025 passed by learned Special Judge (NDPS), Champhai Judicial District, in Champhai PS Case No. 44 / 2019 - whereby he has been sentenced to undergo rigorous imprisonment for 11 (eleven) years and to pay a fine of Rs 1 Lakh (in default, undergo simple imprisonment for six months).

The prosecution in brief is that - Liansiampuii, SDPO Champhai lodged an FIR in Champhai PS to the effect that on 1.6.2019 at 3:00pm, information was received from a reliable source that some narcotic substances suspected to be *Methamphetamine* is kept at the residence of Haukhenkham (25) s/o Thangkhandawng of Vengthar, Champhai. Accordingly, a party comprising Champhai PS staff and CID (SB) Champhai rushed to residence of the above mentioned person. On checking the said house, they recovered 11 bundles, with each bundle containing 50 packets (one packet contains 200 tablets thus 1,10,000 tablets in total) value of Rs. 165 lakhs (approx.) suspected to be *Methamphetamine* which was concealed inside the lining of skirting of the house. The recovered items were seized from possession of Chingsianding (27) w/o Haukhenkham of Vengthar, Champhai. The seized items were packed and sealed in the presence of two witnesses and total weight of the seized items



was 14.228 kgs. The other accused person, head of family Haukhenkham (25) s/o Thangkhandawng of Vengthar Champhai staying at that time, at Aizawl and CID (SB) Aizawl were requested to locate and apprehend him from the spot. The CID (SB) Aizawl reported that he was apprehended at Aizwal on that day itself. The seized articles were brought to Champhai PS after observing legal formalities at the spot. On the basis of the FIR, **Champhai PS Case No. 44 of 2019** was registered under Section 22 (C) of the Narcotic Drugs and **Psychotropic Substances Act, 1985 (herein after NDPS Act, 1985)**.

3. The case was investigated and after completion of the investigation, the investigating officer submitted charge sheet vide **CS no. 105 of 2019** dated 29-11-2019 u/s 22 (C) /29 of the NDPS Act. The charge-sheet was filed against four accused persons, including the present *convict-appellant* namely, *Haukhenkhama*. The accused *Haukhenkhama* and all the other accused persons were charge sheeted under Section 22(C)/29 of the NDPS Act. For accused Shomshul Alom, additional penal provisions were given under section 463/470 IPC r/w section 471/465 IPC.

4. Subsequently, after completion of the usual formalities, charges were framed against all the four charge sheeted accused persons, including the present *convict-appellant* under Sections 22(C)/29 of the NDPS Act vide order dated 11-03-2020. Additional charge was framed against accused Shomshul under section 365 IPC. Upon the charges being put to the accused persons, they denied the same and claimed to be tried, whereupon the trial commenced.

5. During the trial, prosecution examined **7(seven) witnesses**. After the completion of prosecution evidence, the accused persons were examined under Section 313 Cr.P.C. The defence did not adduce any evidence on its part. After completion of trial, accused Nos. 1, 2 and 4, namely, *Shomshul Alom*,



Lalengzuava and Chingsiandingi were acquitted of the charges under section 22 (C) and also 29 of the NDPS Act. The accused *Shomshul Alom* was, however, convicted under section 465 IPC and sentenced separately.

6. The present *convict-appellant* who was accused No. 3 namely, *Haukhenkhama* was convicted under section 22 (C) of the NDPS Act and for such conviction, he was sentenced to undergo rigorous imprisonment for 11 years and pay a fine of Rs. 1 lakh, in default of payment of fine, he was sentenced to undergo simple imprisonment for 6 (six) months.

7. Aggrieved by the aforesaid conviction and sentence under section 22 (C) of the NDPS Act, the *convict-appellant Haukhenkhama* has come before this Court with this criminal appeal.

8. Mr. Johny L Tochwawng, the learned counsel for the convict-appellant submits that - *the presiding officer was not present at the time of the deposition of PW2; that, the sample was not drawn at the place of occurrence; that, the disclosure statement leading to the seizure of the contraband was not recorded; that, the provisions of Section 52A of the NDPS Act has not been complied properly; that, the procedure was also violative of the notification and that sampling was not done before the Magistrate; that, the contraband was already recovered when the accused was apprehended; that, there was no evidence that the contraband was deposited in the Malkhana; that, as the law under the NDPS Act is a stringent one, therefore, the prosecution has to prove its case properly; that, the appellant does not know as to how the contraband was kept in the skirting of his house; that, some other accused persons of this case were acquitted; that, the evidence of the seizing officer is an afterthought. Summing up the submissions, it is contended and submitted by the learned counsel for the appellant that the impugned judgment and sentence suffers from infirmities and therefore, the same should be interfered and set aside, acquitting the appellant.*

9. In support of his submissions the learned counsel for the *convict-appellant*



relies upon the following decisions: -

(i) *State of Rajasthan vs Gurmail Singh, (2005)3 SCC 59,*

(ii) *Madhu Gupta vs State of Assam, 2023 SCC OnLine Gau 2760,*

(iii) *Pooran Singh vs State of Uttarakhand, 2013 SCC OnLine Utt 3387,*

(iv) *State of A.P. vs Gangula Satya Murthy, (1997)1 SCC 272,*

10. On the other hand, *Mrs. Vanneihsiami*, the learned Additional Public Prosecutor appearing for the State submits that - *there are sufficient evidence regarding recovery of the contraband from the house of the accused person and thereafter, the burden shifted to him to show that he was not in conscious possession regarding the same; that, the appellant during the trial as accused failed to discharge that burden and show that he was not in conscious possession of the contraband; that, the appellant could not explain as to how the contraband in such a large quantity came to his house; that, the sampling has to be done before the Magistrate as per the governing law on the subject and in this case, there is evidence regarding sampling before the Magistrate. Summing up the submissions, the prosecution contends and submits that there is no infirmity in the impugned judgment and sentence and the same may be upheld, thereby dismissing the appeal.*

11. In support of her contentions, the learned Additional Public Prosecutor relies upon the following decisions:-

(i) *Bharat Aambale vs State of Chhattisgarh, 2025 SCC OnLine SC 110*

(ii) *Raja Khan vs State of Chhattisgarh, (2025)3 SCC 314*

(iii) *Rakesh Kumar Raghuvanshi vs State of Madhya Pradesh, 2025 SCC OnLine SC 122.*

12. We have carefully perused the Appeal Memo; the impugned judgment and order; the FIR, the depositions adduced during the trial, the examination of the accused under Section 313 Cr.P.C and the documents *exhibited* in the trial. We



have considered the submissions of the learned counsel for the *convict-appellant* and the learned Additional Public Prosecutor. We have also considered the decisions cited at the Bar.

EVIDENCE

13. **PW-1** is *Liansiampuii*, the police official, who stated in his deposition during the trial that he knew the accused person and that on 01.06.2019 at 3 p.m., he received a reliable information that some narcotic contraband substances suspected to be *Methamphetamine* were kept at the residence of the appellant at Vengthar, Champhai. He further stated that in pursuance of the information, he obtained permission from the OC Champhai PS, under Section 41(2) of the NDPS Act and proceeded to the house of the said *convict-appellant* with his parties. After preparing his grounds of belief and information in writing and after arrival of two civilian witnesses, he conducted a search in the residence of the appellant, but the appellant was at Aizawl at that time and only his wife was inside the house with their minor children and that, they could not find anything significant. **PW-1** further testified that they requested the CID (SB) Aizawl to locate and apprehend the accused appellant and after he was apprehended, he confessed to the CID (SB) that he had hidden 11 bundles of *Methamphetamine* inside the lining of the skirting beside the master bed and thereafter, without conducting further search, they broke open the skirting of the house and recovered 11 bundles, each containing 10 packets with each packet containing 200 tablets and therefore, 1,10,000 tablets in total of *Methamphetamine* from the skirting of the house. **PW-1** testified that weighing and repackaging were done in the presence of civilian witnesses and seized articles weighed 14.228 Kgs. in total. He further testified that as the sealed articles were seized from the possession of the co-owner of the house (wife of



the appellant), he also conducted a formal search of her person, checking on her body and before conducting checking, he asked her whether she wanted to be checked before a Magistrate or Gazetted Officer, but she preferred to be checked on the spot only and thereafter, he proceeded to conduct search on her body. She was subsequently arrested and produced at the police station before sunset. **PW-1** further testified that he submitted a report of the seizure and also an FIR to the officer-in-charge, Champhai police station and handed over the case for further investigation. As part of his deposition, **PW-1** exhibited as *Exhibit P1*, the seizure memo and his signature thereon, as *Exhibit P1(c)*. He also *exhibited* as *Exhibit P2*, the FIR and his signature thereon as *Exhibit P2(a)*. He *exhibited* the arrest memo as *Exhibit P3* and his signature thereon, as *Exhibit P3(a)*. He *exhibited* the **grounds of relief as Exhibit P4** and his signature thereon as *Exhibit P4(a)* and *P4(b)*. He *exhibited* the **authorization** under section 41(2) of the NDPS Act as *Exhibit P5* and the information in writing under section 42(1) of the NDPS Act as *Exhibit P6*. He *exhibited* the report of seizure and arrest as *Exhibit P7* and his signature thereon as *Exhibit P7(a)*.

14. In *cross-examination*, **PW-1** affirmed that he had sent the information in writing under section 42(1) of NDPS Act, along with the report of seizure and arrest as well as FIR on the same date to the OC, Champhai police station. But that, the OC, Champhai did not append his signature on the body of the information in writing to show that he had received the documents on the same day. **PW-1** admitted in *cross-examination* that the samples were not drawn at the place of occurrence and that he did not know whether the seized articles were sent immediately before the Magistrate for certification. He also admitted that he does not know whether the OC, Champhai police station made an application for certification of seized articles to the Magistrate.



15. **PW-2 F. Lalrinmuana** stated that on 01.06.2019 at around 3 p.m., Champhai police personnel informed him that they received a reliable information about the *convict-appellant* concealing and keeping some contraband articles in his residence and that the police officer requested him to be a witness to the seizing of the contraband articles. Accordingly, **PW-2** and his friend *C. Lalventhuama* proceeded to the place of occurrence along with the police officer and upon reaching there, the Champhai police under the supervision of SDPO conducted search of the house of the *convict-appellant* and they recovered 11 bundles of *Methamphetamine*. These bundles contained 50 packets and total tablets were 1,10,000 pieces. They were concealed inside the wooden plank lining of the skirting of the said house. **PW-2** stated that in his presence, the police officer conducted weighing of the seized articles and the total weight was found to be 14.228 Kgs. He further testified that after weighing of the seized articles, the police officer packed and sealed the said seized articles in his presence, prepared seizure memo on the spot and he put his signature on the body of the seizure memo. **PW-2** testified that after observing all the legal formalities on the spot, the police officer produced the seized articles and the wife of the *convict-appellant* at the Champhai police station. He proved as *Exhibit P1(a)*, his signature on the body of the seizure memo.

16. In *cross-examination*, **PW-2** stated that at the time of seizure and recovery of the seized articles, he only saw the wife of the *convict-appellant* who was accused No. 2. He further stated during *cross-examination* that before his deposition and *cross-examination* and while taking oath, the learned Special Judge was not present in the court. He admitted that the I/O or the seizing officer had not taken his statement. He also stated that the house where the articles were recovered is not owned by accused Nos. 3 and 4 and he also



expressed ignorance as to whether the accused Nos. 3 and 4 had a house guest. He also stated that he cannot recall the amount of the seized articles without getting information from the case record and he also cannot remember the weight of the seized articles without checking from the case record. **PW-2** stated that the *convict-appellant* (accused No. 3) was not present during the recovery of the seized articles.

17. **PW-3** is another seizure witness *C. Lalventhuama* and he stated that on 01.06.2019 at around 3 p.m., Champhai police informed him that they received the reliable information about one person *Haukhenkhama* of Vengthar concealing and keeping contraband articles in his residence and that the police officer requested him to be a witness to the seizure of the same. He further testified that accordingly, he and his friend *F. Lalrinmuana* (**PW-2**) proceeded to the place of occurrence along with the police officer and reached the residence of the *convict-appellant* where the police with the supervision of SDPO conducted search of the house and upon doing so, recovered 11 bundles of *Methamphetamine* with each bundle containing 50 packets and total tablets were 1,10,000 which were concealed inside the wooden plank lining of the skirting of the house. **PW-3** testified that in his presence, police conducted weighing of the seized articles and found it to be 14.228 kgs. He further testified that after weighing of the seized articles, the police officer packed and sealed the articles in his presence and prepared seizure memo on the spot where he put his signature. **PW-3** testified that after observing all the legal formalities on the spot, police officer produced the seized articles and the wife of the *convict-appellant*, who was co-accused at the Champhai police station. **PW-3** proved as *Exhibit P1(b)* his signature on the seizure memo.

18. In *cross-examination* – PW-3 stated that at the time of the seizure, he



only saw accused No. 4, the wife of the *convict-appellant* (who was acquitted after the trial) as already mentioned earlier. He further admitted in *cross-examination* that his statement was not recorded during investigation. He stated that the house from where the seized articles were recovered is not owned by accused Nos. 3 & 4 and that he does not know whether they have a house guest. He also stated that without referring to the case record, he cannot recall the amount of the seized articles or its weight. **PW-3** stated in *cross-examination* that the *convict-appellant* was not present during the recovery of the seized articles.

19. **PW-4** *Ginzawmliana* deposed that on 30.05.2019, the *convict-appellant* called him on phone and asked him to accompany him to Jokhawthar in the next morning and accordingly, they proceeded there and after reaching, they went to *Khawmawi*, where they drank beer and whisky. **PW-4** testified that the *convict-appellant* was on conversation on the phone with some other person, but he did not know the nature of the conversation. Later, they came back to Jokhawthar side and stopped near customs gate and halted there for a while and one person riding a pink scooty came and asked them to follow him. Accordingly, they followed him and stopped outside one house whereupon the *convict-appellant* and the scooty rider went inside a house and **PW-4** remained outside near his bike. **PW-4** further testified that when the *convict-appellant* and the scooter rider came out of the house, the *convict-appellant* was carrying one bag and thereafter, the **PW-4** drove the bike and *convict-appellant* carried the bag on his lap and sat behind him and after coming back to Champhai, the *convict-appellant* paid him a sum of Rs.2,000/- for hiring his bike. **PW-4** testified that before this also, once the *convict-appellant* had asked him to accompany him to *Khawmawi* and said that he had some important business



there.

20. In *cross-examination*- **PW-4** stated that the *convict-appellant* never mentioned about *Methamphetamine* before him. He also stated that he did not know the contents of the bag that the *convict-appellant* carried from the house, where he had gone in with the pink scooty rider. He also stated that when they came back with the bag, no checking was done by police on the way. He stated in *cross-examination* that the colour of the bag carried by the *convict-appellant* was black in colour.

21. **PW-5** is one *Lalmuanawma* who testified that he along with his Joint Director *T Lalrophia* examined the seized articles being **Exhibit C (CPI)-260 (1) to C(CPI)-260(11)** and confirmed that the seized articles contained *Methamphetamine*. He proved the FSL report as *Exhibit P15* and his signature thereon as *Exhibit P15 (a)*.

22. In *cross-examination* – PW-5 stated that all the 11 *Exhibits* were under 1 gram each and also stated that each *Exhibit* contained 2 tablets. He admitted that only *Exhibit 9* contained green tablet.

23. **PW-6** is one *Lalpianpuui*, police officer who stated during his deposition that he knew the accused person and testified that as endorsed by the OC, Champhai police station, he went to the office of the Assistant Commissioner, Aizawl district and collected the fake ILP documents submitted by co-accused *Shomshul Alom* using another name. Thereafter, he also sent the two documents to the investigating officer. He proved the wireless message given by the OC, Champhai police station as *Exhibit P8* and the receipt of ILP documents from Assistant Commissioner Aizawl as *Exhibit P9*, the ILP form of accused *Shomshul Alom* as *Exhibit P10* and temporary ILP of co-accused *Shomshul Alom*



as *Exhibit P11*. *Cross-examination* was declined

24. **PW-7** is SI V L Chama Ralte, who was the Investigating Officer of the case. He stated in his deposition that he knew the accused person and he was endorsed to investigate the case and during investigation, he examined the seizing officer, who stated about receiving information regarding keeping of contraband substances suspected to be *Methamphetamine*, in the residence of the *convict-appellant* and that he received the information on 01.06.2019. **PW-7** stated that in her statement the seizing officer stated about obtaining permission from OC, Champhai under Section 41 (2) of NDPS Act and proceeding to the house of the *convict-appellant* and there, in the presence of witnesses conducting search and later, the *convict-appellant* was found in Aizawl where he was interrogated by CID (SB) and he confessed to have hidden 11 bundles of *Methamphetamine* inside the lining of the skirting behind the master bed and that after conducting search there by breaking open the skirting, they recovered 11 bundles, each containing 10 packets with one packet containing 200 tablets and total 1,10,000 tablets of *Methamphetamine* in the skirting of the house. **PW-7** stated that the seizing officer also stated in her statement that the weight of these seized articles was 14.228 kgs. **PW-7** stated that the civilian witnesses corroborated the statement of the seizing officer and stated about witnessing the recovery, seizure, weighing and repackaging with their own eyes. **PW-7** stated that during investigation, he interrogated the accused persons including the present *convict-appellant*. He also sent the seized articles to FSL Aizawl and he got a confirmation that the seized articles were *Methamphetamine*. Upon completion of investigation and finding evidence, he submitted charge-sheet. He proved the charge-sheet as *Exhibit P8* and his signature thereon as *Exhibit P8(a)*. He proved the arrest memo of the present



convict-appellant as *Exhibit P9* and his signature thereon as *Exhibit P9(a)*. He proved as *Exhibit P10*, the inventory of the seized articles and as *Exhibit P11* and *Exhibit P11(a)*, the photograph of inventory and sampling.

25. In *cross-examination*, **PW-7** admitted that in the documents of grounds of belief and the information in writing, there was no signature of the OC, but it was delivered to the OC as always. He also admitted that the tablets were partially counted and rounded up the numbers as they were aware of the contents of each bundle, sub-bundles and packets and bundles and sub-bundles were in consonance with each other. He also stated that all the bundles, sub-bundles and small packets were separately counted. **PW-7** stated that they had seized 11 bundles and 11 *Exhibits* were sent to the FSL as sample. He admitted that at that time, they were not equipped with UN field testing kit during that time. He also stated that the seized articles consisted of red color and spotted with light green colors. He stated that the samples sent to FSL were not only red color but also green color. He stated that he was present at the time of the sampling and that the Magistrate came to the PS as requested and samples were done at the PS in presence of the Magistrate.

26. **PW-7** stated in *cross-examination* that he deposited the seized articles as soon as finishing drawing of samples and they were briefly entered and recorded in the *Malkhana* register book. However, he admitted that no receipt or copy of the extract of the register has been submitted. He admitted that he does not know the name of the legal owner of the house from where the seized articles were recovered. But he knew that he had blood relationship with the accused persons. He also stated that he did not highlight the name of the legal owner of the house as he had no involvement and that he had let out the house to the accused persons.



DISCUSSION

27. In a trial under the NDPS Act, usually the following important facts are required to be proved. *(i) the seizure of the contraband from the possession or from the premises of the accused in the presence of witnesses; (ii) wherever, the provisions of Section 42 are applicable, evidence regarding the recording of information and sending the same to the higher police authority. (iii) Proof of sampling and inventory before the Magistrate, (iv) evidence to the effect that the sample out of the contraband, which was seized in the presence of witnesses from the accused or his premises and certified by the Magistrate are sent to the FSL and duly received there, (v) a positive finding from the forensic laboratory about the said contraband being one of the substances prohibited under the NDPS Act and with regard to which an offence under the Act is created.*

28. In the instant case, during the trial, the seizing officer PW-1, who was an SDPO of police, has testified about receiving the information and searching the house of the accused in the presence of his wife and not finding anything initially. It is revealed from his evidence that subsequently, the accused who was in Aizawl, was interrogated by the CID Special Branch to which he confessed about contraband being hidden in his house at the stated location.

29. It is further revealed from the evidence of PW-1 that thereafter, skirting of the house beside the master bed was explored and that revealed the contraband in the nature of 11 bundles of suspected methamphetamine containing 10 packets with each packet containing 200 tablets and thereby 1,10,000 tablets of suspected methamphetamine. The weight was 14.228 kgs.

30. The testimony of PW-1 about the forensic seizure of the contraband, upon it being found in the house of the accused has stood its ground in cross-



examination. PW-1 has duly proved the seizure memo, his signature thereon as well as the FIR subsequently, lodged by him before the Champhai Police Station.

31. The Seizing Officer being an SDPO was obviously a Gazetted Officer and therefore, the provisions of Section 42 about recording his information and sending it to higher police authority was not really applicable in terms of Section 41 of the NDPS Act.

32. Nevertheless, PW-1 has exhibited the information that he had received and which was reduced to writing and his grounds of satisfaction. He had exhibited and proved the information that he had sent to the O/C of Champhai Police Station and also the authorization given to him by the O/C Champhai Police Station.

33. It is admitted in cross-examination by PW-1 that though the information in writing was sent on the same day but O/C Champhai did not append his signature on the body of the writing to show that he had received on the same day.

34. The learned counsel for the appellant had contended that the samples were not drawn at the place of occurrence as has been admitted by PW-1 in his cross-examination and that the same constitutes violation of the standing order regarding sampling issued by the Government of India. However, it has been held by the Hon'ble Supreme Court in ***Union of India v. Mohanlal, (2016) 3 SCC 379*** that sampling of the contraband has to be done before the Magistrate in compliance with section 52A of the NDPS Act.

35. Moreover, if there is a conflict between the statutory provision regarding taking of samples and standing order of Central Government, the conflict has to be resolved in favor of the statute on the basis of the first principles of interpretation. The relevant paragraphs of **Mohanlal (supra)**, being para 15, 16,



17 and 18 may be reproduced herein below:-

“15. It is manifest from Section 52-A(2)(c) (supra) that upon seizure of the contraband the same has to be forwarded either to the officer-in-charge of the nearest police station or to the officer empowered under Section 53 who shall prepare an inventory as stipulated in the said provision and make an application to the Magistrate for purposes of (a) certifying the correctness of the inventory, (b) certifying photographs of such drugs or substances taken before the Magistrate as true, and (c) to draw representative samples in the presence of the Magistrate and certifying the correctness of the list of samples so drawn.

16. Sub-section (3) of Section 52-A requires that the Magistrate shall as soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officer-in-charge of the police station or the officer empowered, the officer concerned is in law duty-bound to approach the Magistrate for the purposes mentioned above including grant of permission to draw representative samples in his presence, which samples will then be enlisted and the correctness of the list of samples so drawn certified by the Magistrate. In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct.

17. The question of drawing of samples at the time of seizure which, more often than not, takes place in the absence of the Magistrate does not in the above scheme of things arise. This is so especially when according to Section 52-A(4) of the Act, samples drawn and certified by the Magistrate in compliance with sub-sections (2) and (3) of Section 52-A above constitute primary evidence for the purpose of the trial. Suffice it to say that there is no provision in the Act that mandates taking of samples at the time of seizure. That is perhaps why none of the States claim to be taking samples at the time of seizure.



18. Be that as it may, a conflict between the statutory provision governing taking of samples and the Standing Order issued by the Central Government is evident when the two are placed in juxtaposition. There is no gainsaid that such a conflict shall have to be resolved in favour of the statute on first principles of interpretation but the continuance of the statutory notification in its present form is bound to create confusion in the minds of the authorities concerned instead of helping them in the discharge of their duties. The Central Government would, therefore, do well, to re-examine the matter and take suitable steps in the above direction.”

36. Therefore, in terms of the aforesaid settled law, even if the samples were not drawn at the place of occurrence, the same would not come to the aid of the appellant in defeating the prosecution case. The evidence regarding seizure of the contraband in the nature of methamphetamine from the house of the accused has been duly corroborated by the testimony of PW-2 and PW-3, who were the independent seizure witnesses. Their testimony reveals that they were asked by the police team led by the seizing officer, PW-1, to participate in the operation. Both these witnesses have stated about the recovery of the contraband in the nature of methamphetamine from the lining of the skirting of the house.

37. The testimony of both the seizure witnesses not only corroborate the testimony of PW-1 but they are also consistent with one another regarding being witness to the search and seizure operation resulting in the recovery of 14.228 kgs. of contraband in the nature of methamphetamine. Both these witnesses have duly proved their signatures on the seizure list.

38. We have duly perused the seizure list (Exhibit P-1) which indicates seizure of 11 bundles of tablets with each bundle containing 50 packets, with each



tablet containing 200 tablets, thereby 1,10,100 tablets, valued at **Rs. 165.00 lakhs**, of red tablets suspected to be methamphetamine.

39. The signature of PW-1 appears as also the proved signatures of PW-2 and PW-3 as the seizure witnesses. Thus, the testimony of PW-1 together with the testimony of PW-2 and PW-3 are cogent and consistent regarding the seizure of 14.228 kgs. of suspected contraband in the nature of methamphetamine from the skirting of the wall of the house in which the appellant was staying with his wife and children. Another aspect which emerges from the testimony of PW-2 and PW-3 is that they have stated cogently about witnessing the weighing of the contraband by the Police Officer in their presence.

40. Importantly, PW-2 and PW-3 have also stated about witnessing that the police officer had packed and sealed the seized articles in their presence and preparing the seizure memo, where, they signed.

41. PW-6 is a Police Officer but his testimony is more regarding verifying the fake ILP documents of co-accused Shomsul Alum and his testimony is not much relevant to the materials with regard to the present appellant.

42. The testimony of PW-4 is not directly related to the present incident of recovery of contraband from the house of the appellant; but, nevertheless, it has a secondary significance. From the unshaken testimony of PW-4, it has emerged that on at least two earlier occasions, the appellant had hired his scooter to travel with him with his bike to travel with him and on the occasion described by the witness, they stopped at a place where the appellant and rider of one scooty who joined them on the way, went inside the house and after emerging, the appellant was carrying a bag in his hand. PW-4 was paid some money by the appellant for giving him the service of travel on his two-wheeler.



43. The prosecution has contended that on the basis of the evidence and facts proved, conscious possession can be attributed to the appellant. And once that is so, the appellant would have to discharge his burden that he was not in conscious possession.

44. The prosecution has contended that the appellant has not been able to discharge the said burden. In **Rakesh Kumar Raghuvanshi (supra)**, relied upon by the prosecution, it is stated in para-21 as follows:-

“21. Conscious possession refers to a scenario where an individual not only physically possesses a narcotic drug or psychotropic substance but is also aware of its presence and nature. In other words, it requires both physical control and mental awareness. This concept has evolved primarily through judicial interpretation since the term “conscious possession” is not explicitly defined in the NDPS Act. This Court through various of its decisions has repeatedly underscored that possession under the NDPS Act should not only be physical but also conscious. Conscious possession implies that the person knew that he had the illicit drug or psychotropic substance in his control and had the intent or knowledge of its illegal nature.”

45. With regard to the contention of the appellant side regarding not doing of sampling at the place of seizure and violation of the standing order of 1989, the prosecution has referred to the case of **Bharat Ambale (supra)**. In this recent judgment also, the Hon'ble Apex Court, summarizing its findings in para-50, has stated that mere non-compliance with the procedure under Section 52A or the standing orders will not necessarily be fatal to the trial, unless there are discrepancies in the physical evidence rendering the prosecution case doubtful. It was further held that, if otherwise, the prosecution materials inspired confidence regarding the recovery and conscious possession, then the conviction can be recorded despite some procedural defect in terms of Section 52A of the NDPS Act. The relevant para 50 (IV), (V) and (VI) are reproduced



herein below:-

“(IV) 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 see 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.

(V) Mere non-compliance of the procedure under Section 52A or the Standing Order(s) / Rules there under will not be fatal to the trial unless there are discrepancies in the physical evidence rendering the prosecution's case doubtful, which may not have been there had such compliance been done. Courts should take a holistic and cumulative view of the discrepancies that may exist in the evidence adduced by the prosecution and appreciate the same more carefully keeping in mind the procedural lapses.

(VI) If the other material on record adduced by the prosecution, oral or documentary inspires confidence and satisfies the court as regards the recovery as-well as conscious possession of the contraband from the accused persons, then even in such cases, the courts can without hesitation proceed to hold the accused guilty notwithstanding any procedural defect in terms of Section 52A of the NDPS Act.”

46. PW-1 in his testimony, has stated about handing over the materials and wife of the appellant who was arrested at that time, to the O/C Champhai Police Station for further investigation. It has also emerged from the testimony of PW-7, the I/O, that the house in which the appellants were staying belonged to another person but no materials were found about his involvement. He had only rented out the house to the convict appellant and his family.

47. PW-7, the I/O, has stated about PW-1, the seizing officer (SDPO), narrating about the incident on the lines which has emerged from the testimony of PW-1. PW-7, the I/O, has also stated the same regarding the seizure



witnesses and about their corroboration of the seizure and having witnessed the recovery, seizure, weighing and repackaging with their own eyes. It has emerged from the cross-examination of PW-7 that though the signature of the O/C was not there on the grounds of belief and information sent by PW-1, but they were delivered to the O/C as always. PW-7 has also stated about 11 bundles and about submitting 11 exhibits to FSL as sample. From his testimony, the presence of the Magistrate during the sampling has emerged.

48. Before proceeding further, we would like to discuss the forensic evidence rendered by PW-5. PW-5, the forensic witness, has exhibited and proved the FSL report and his signature and testified about the seized articles giving a result of methamphetamine upon forensic examination. From his testimony, it emerges that 11 exhibits were there, which tallies with the testimony of PW-7, the I/O, that 11 exhibits were sent to the FSL as sample.

49. In this context, it has emerged from the testimony of PW-7, the I/O, that after drawing up samples, he promptly deposited the seized articles and the particulars entered in the Malkhana Register book. However, it has emerged from his cross-examination by way of his admission that no receipt or extra copy of the register has been submitted.

50. The learned counsel for the appellant has contended that there are deficiencies in the chain of custody and in support of the same, referred to the decision of **Gurmail Singh (supra)** para-3 of the said decision may be reproduced herein below:-

“3. We have perused the judgment of the High Court. Apart from other reasons recorded by the High Court, we find that the link evidence adduced by the prosecution was not at all satisfactory. In the first instance, though the seized articles are said to have been kept in the Malkhana on 20th May, 1995, the Malkhana register was not



produced to prove that it was so kept in the Malkhana till it was taken over by PW-6 on June 5, 1995. We further find that no sample of the seal was sent along with the sample to Excise Laboratory, Jodhpur for the purpose of comparing with the seal appearing on the sample bottles. Therefore, there is no evidence to prove satisfactorily that the seals found were in fact the same seals as were put on the sample bottles immediately after seizure of the contraband. These loopholes in the prosecution case have led the High Court to acquit the respondent.”

51. There is no doubt that there should be chain of custody and evidence regarding the same, so that, the Court is satisfied before reaching any conclusion that there is no dichotomy between the sample seized and the sample examined in the forensic laboratory.

52. Coming back to the facts of the case, PW-7, the I/O, has testified about depositing the materials in the Malkhana and making entries in the Malkhana register book, though he has not adduced the Malkhana register in evidence. Further, it has also emerged from his testimony that 11 exhibits were sent to the FSL and the FSL report as also the testimony of the forensic witness - mentions about 11 exhibits received and examined in the laboratory.

53. It is also stated in Exhibit P-15, the FSL report that - *the parcel consisted of 11 exhibits packed and sealed in polythene bags and enclosed together in a paper envelope sealed in wax seals, the seal impression corresponding to that forwarded.* Therefore, upon perusing the available evidence with regard to the chain of custody, we are of the considered opinion that the same is reasonably sufficient and that the exhibits which were sampled after seizure were sent to the FSL and such sample exhibits were examined in the FSL, returning a positive finding for methamphetamine.

54. Upon perusing and analyzing the entire evidence on record, including the exhibited documents - we hold that a commercial quantity of psychotropic



substances in the nature of methamphetamine were seized from the house of the appellant, with the contraband hidden in the skirting of wall in the bedroom. The said contraband was duly seized by PW-1, which is corroborated by the testimony of the independent witnesses PW-2 and PW-3.

55. As already mentioned, we have found the evidence regarding chain of custody to be satisfactory. The forensic examination confirmed that the seized substances were methamphetamine. The testimony of the I/O PW-7 fortifies the rest of the prosecution evidence. Hence, we are of the opinion that there is no infirmity in the judgment of the learned Trial Court in convicting the petitioner under Section 22(C) of the NDPS Act pertaining to possession etc., of Psychotropic Substances in the bracket of commercial quantity. The said conviction of the convict appellant under 22(C) is hereby upheld and confirmed.

56. Section 22(C) is punishable with rigorous imprisonment for minimum 10(ten) years and which may extend to twenty years and a minimum fine of Rs.1,00,000/-, which may extend to Rs.2,00,000/-(Rupees Two Lakhs).

57. Considering the circumstances and the quantity in which the contraband was seized, it is quite clear that such a large quantity of psychotropic substances could not have been for personal consumption of the appellant and that they were in all probability kept for the purpose of selling to others - which is undoubtedly a grave danger to society.

58. Therefore, we do not find any scope for interference with the sentence on the lower side and consequently, the sentence of rigorous imprisonment of 11 (eleven) years and fine of Rs. 1,00,000/- (in default simple imprisonment for 6 months) is also hereby upheld and confirmed. Thus, the impugned judgment and order dated 16.04.2025 passed by learned Special Judge (NDPS), Champhai



Judicial District, in Champhai P.S. Case No. 44 / 2019 stands confirmed.

59. Resultantly, the instant criminal appeal is found to be devoid of merits and is accordingly dismissed and disposed of on the aforesaid terms.

JUDGE

JUDGE

Comparing Assistant