

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (DB) No.566 of 2024

Sahjad, age about 32 years, S/o Mahmud, resident of
Village Alipura, P.O. & P.S. Sasawa, District Saharanpur,
U.P. Appellant

Versus

The State of Jharkhand Respondent

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE SANJAY PRASAD

For the Appellant : Mr. Chandan Kumar, Advocate
For the Respondent : Mr. Subodh Kr. Pandey, A.P.P.

Order No. 20/Dated 20th March, 2026

I.A. No.16603 of 2025

1. The instant interlocutory application has been filed under Section 430(1) of Bhartiya Nagarik Suraksha Sanhita, 2023 on behalf of the appellant, for suspension of sentence dated 20.03.2024 passed in N.D.P.S. Case No.10 of 2023 arising out of Sadar P.S. Case No.40 of 2023 by the learned Special Judge, N.D.P.S. Act, Palamau at Daltonganj, whereby and whereunder the appellant has been sentenced for the offence under Section 15(C) of the N.D.P.S. Act to undergo rigorous imprisonment for 20 years along with fine of Rs.2,00,000/- and in default of payment of fine, further R.I. for six months.

2. Mr. Chandan Kumar, learned counsel appearing for the appellant, at the outset, has submitted that earlier also interlocutory application, being I.A. No.4416 of 2024, for suspension of sentence was filed, but the same was

dismissed as not pressed, as would be evident from order dated 26.03.2025.

3. He has submitted that it is a case where the entire prosecution version is fit to be vitiated on the ground of non-compliance of the process of sampling as provided under Rule 10 of the N.D.P.S. (Seizure, Storage, Sampling and Disposal) Rules, 2022 (hereinafter to be referred as the N.D.P.S. Rules, 2022).

4. Learned counsel appearing for the appellant has referred the relevant provisions of Rule 10 of the N.D.P.S. Rules, 2022. He has also referred an order passed by this Court in the case of Chandan Kumar Yadav @ Chandan Kumar passed in I.A. No.6269 of 2023 dated 28.11.2023 arising out of Criminal Appeal (DB) No.148 of 2021.

5. While on the other hand, Mr. Subodh Kumar Pandey, learned Additional Public Prosecutor appearing for the State has vehemently opposed the prayer for bail.

6. It has been contended that the provision of Rule 10 of the N.D.P.S. Rules, 2022, particularly proviso to Sub-Rule (2) of Rule 10 is not at all applicable for the aid of the present appellant since, herein, altogether 54 bags (sacks) of contraband (poppy straw) have been recovered and seized. From each bag small quantity has been taken out and the same has been collected in a bag and thereafter the

same was placed before the concerned Magistrate for sending it to the Forensic Science Laboratory.

7. Learned counsel has submitted that Rule 10(2) of the N.D.P.S. Rules, 2022, particularly its proviso is in the different context.

8. It has been submitted that reliance which has been placed by the learned counsel appearing for the appellant in the case of Chandan Kumar Yadav @ Chandan Kumar appellant in Criminal Appeal (DB) No.148 of 2021 wherein the order of suspension has been passed in on different background of the facts, since, in the said case out of 62 packets of the contraband said to be recovered, only the samples have been taken from four packets. Here it is not the case.

9. This Court has heard learned counsel for the parties and gone through the finding recorded by the learned Trial Court in the impugned judgment as also the Trial Court Records.

10. The admitted fact as per the material available on record is that altogether 54 bags (sacks) of the poppy straw, quantity thereof is 700 Kgs, have been recovered. The proper seizure was made.

11. This Court has gone through the testimony of P.W.-7 who has stated in the evidence that the samples have been taken of the poppy straw from all 54 bags (sacks) and

collected in single bag and after getting due permission from the Magistrate after placing the sample before it, the same was sent to the Forensic Science Laboratory wherein the nature of contraband has been certified as per Ext.-P-16.

12. This Court, in view of the aforesaid admitted position, is now proceeding to consider the argument which has been advanced on behalf of the appellant by relying upon the provision of Sub-Rule(2) of Rule 10 of the N.D.P.S. Rules, 2022 for ready reference, Rule 10 is being referred hereunder as :-

10. Drawing the samples. – (1) One sample, in duplicate, shall be drawn from each package and container seized.

(2) When the packages and containers seized together are of identical size and weight bearing identical marking and the contents of each package give identical results on colour test by the drugs identification kit, conclusively indicating that the packages are identical in all respects, the packages and containers may carefully be bunched in lots of not more than ten packages or containers, and for each such lot of packages and containers, one sample, in duplicate, shall be drawn:

Provided that in the case of ganja, poppy straw and hashish (charas) it may be bunched in lots of not more than forty packages or containers.

(3) In case of drawing sample from a particular lot, it shall be ensured that representative sample in equal quantity is taken from each package or container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot.”

13. It is evident from the aforesaid provision that the maximum number of packages or containers of the contrabands while taking the samples have been referred.

14. The fact of the case as would be evident from the record is that the contraband (poppy straw) has been recovered in 54 bags (sacks) and after taking samples from each bag individually, the same has been kept in a single bag. The same was placed before the concerned Judicial Magistrate for the purpose of compliance of the provision of Rule 9 of the N.D.P.S. Rules, 2022.

15. The report of the Forensic Science Laboratory dated 07.06.2023 (Ext.-P-16) has been received certifying the nature of contraband to be prohibitory under the provisions of N.D.P.S. Act.

16. This Court, therefore, is of the view that based upon the facts of the present case, the proviso to Sub-Rule(2) of Rule 10 of the N.D.P.S. Rules, 2022 is not of any aid to the appellant.

17. The second ground has been agitated by putting reliance upon the order passed by this Court in the case of Chandan Kumar Yadav @ Chandan Kumar passed in I.A. No.6269 of 2023 dated 28.11.2023 arising out of Criminal Appeal (DB) No.148 of 2021.

18. This Court, in order to consider the applicability of the said judgment, has gone through the factual aspect of

the aforesaid case and found therefrom that in that case 62 packets of contraband have been recovered but the samples have only been taken out from four packets.

19. This Court, based upon the aforesaid fact, has considered the provisions of Section 52A(4) of the N.D.P.S. Act and the Standing Order 1 of 1989 and has come to the *prima facie* view that the aforesaid provision has not been adhered to since the samples have not been taken from all 62 packets.

20. But, herein, the samples have been taken from each 54 bags (sacks) separately and mixed in a bag for the purpose of sending it to the Forensic Science Laboratory after producing it before the Judicial Magistrate concerned.

21. This Court, therefore, is of the view that the facts of the case upon which reliance has been placed, i.e., the order dated 28.11.2023 passed in the case of Chandan Kumar Yadav @ Chandan Kumar appellant in Criminal Appeal (DB) No.148 of 2021, as referred hereinabove, is not identical to the facts of the present case so far as the imputations which have been substantiated in course of trial.

22. This Court, considering the fact that 700 Kgs. of poppy straw has been recovered and no counter question has been put to the I.O. for making out a case in defence, is

of the view that it is not a case, on consideration of the quantity of the contraband, for suspension of sentence.

23. Accordingly, the prayer for suspension of sentence of the appellant is rejected. I.A. No. 16603 of 2025, is hereby dismissed.

(Sujit Narayan Prasad, J.)

(Sanjay Prasad, J.)

Date : 20th March, 2026

Birendra/