



A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.1250 of 2025

CNR No-ODHC010785192025

(In the matter of an application under Section 415(2) of Bharatiya
Nagarik Suraksha Sanhita, 2023 corresponding to Section 374(2) of
Criminal Procedure Code, 1973).

1. Sk. Tamir **Appellant (s)**
2. Sk. Ersat

-versus-

State of Odisha **Respondent (s)**

Advocates appeared in the case through Hybrid Mode:

For Appellant (s) : *Ms. Sonia Mathur, Sr. Adv.*
along with
Ms. Chandana Tripathy, Adv.

For Respondent(s) : *Ms. Gayatri Patra, ASC*

CORAM:

DR. JUSTICE SANJEEB K PANIGRAHI

DATE OF HEARING:-07.05.2026

DATE OF JUDGMENT:-07.08.2026

Dr. Sanjeeb K Panigrahi, J.

1. The present appeal, CRLA No. 1250 of 2025, has been preferred by Sk. Tamir and Sk. Ersat against the judgment dated 17.10.2025 passed by the learned 2nd Additional Sessions Judge-cum-Special Judge, Cuttack, in G.R. (Spl.) Case No.15 of 2021 arising out of C.D.A. Phase-II P.S. Case No. 44 dated 06.06.2021, whereby each of them is sentenced to undergo R.I. for ten years and to pay a fine of Rs.1,00,000/- only each, in default, to suffer further R.I. for six months each.



I. FACTUAL MATRIX OF THE CASE:

2. According to P.W.11, Sandhyarani Singh, the then IIC of C.D.A. Phase-II Police Station, she received prior information at about 1:00 P.M. on 06.06.2021 that brown sugar was being transported from the Athagarh side in a TATA Indica car bearing Regd. No. OR-01N-0160, allegedly piloted by a Yamaha YZF-R15 motorcycle bearing Regd. No. OD-01Q-6978.
3. The information was recorded in the Station Diary, superior officers were informed, and a raiding team led by S.I. Abinash Parida, P.W.2, was directed to proceed to Madhusudan Setu Check Point. The prosecution version is that the team reached the spot at about 1:55 P.M.
4. The police intercepted the motorcycle and the TATA Indica car. Sk. Tamir was stated to be driving the car, Sk. Ersat was seated in it, and Sk. Alauddin alias Alamuddin, subsequently treated as a Child in Conflict with Law, was riding the motorcycle.
5. P.W.2 stated that separate notices under Section 50 of the NDPS Act were issued and the suspects opted to be searched in the presence of a Gazetted Officer. On requisition, S.N. Muduli, ACP, Zone-III, arrived at the spot at about 3:45 P.M. A weighman, Nitai Maity, P.W.10, was also called.
6. The prosecution alleged recovery of four packets from Sk. Tamir weighing 101, 105, 101 and 104 grams, totalling 411 grams; four packets from Sk. Ersat weighing 106, 101, 102 and 108 grams, totalling 417 grams; and two packets from Sk. Alauddin weighing 103 and 107



grams, totalling 210 grams. The total alleged recovery was 1.038 kilograms. No contraband was allegedly recovered from either vehicle.

7. The packets attributed to Sk. Tamir were marked A to D, those attributed to Sk. Ersat were marked E to H, and those attributed to Sk. Alauddin were marked J and K. P.W.2 claimed that the packets were weighed, documented and sealed with his brass seal, which was thereafter left in the custody of P.W.10.
8. The raiding party returned to the police station, and the written report was presented at about 6:55 P.M. The case was registered, the articles were stated to have been deposited in the police Malkhana under Malkhana Entry No. 1/2021, and the accused were forwarded to court on 07.06.2021.
9. On 07.06.2021, the ten sealed packets were produced before the S.D.J.M. (Sadar), Cuttack. Two samples of five grams each were drawn from every packet and marked A-1 to K-1 and A-2 to K-2. The first set was forwarded to SFSL, Rasulgarh, on 08.06.2021.
10. The Chemical Examination Report, marked Ext. P-47, recorded that the samples contained heroin/brown sugar/diacetyl morphine.
11. The charge-sheet was submitted on 03.12.2021, and charge under Section 21(c) of the NDPS Act was framed on 24.02.2023. The prosecution examined eleven witnesses and produced forty-seven documentary exhibits and twenty-one material objects. The defence did not adduce separate evidence and pleaded complete denial and false implication.



12. By judgment dated 17.10.2025, both appellants were convicted under Section 21(c) and sentenced to rigorous imprisonment for ten years with a fine of ₹1,00,000 each, with six months' further rigorous imprisonment in default. Their custody was directed to be set off under Section 428 CrPC.

II. SUBMISSIONS ON BEHALF OF THE APPELLANTS:

13. Learned Senior Counsel for the Appellants Ms. Sonia Mathur earnestly made the following submissions in support of her contentions, as borne out from the Written Note of Submissions:

- i) The appellants contend that the alleged recovery is fabricated and lacks independent corroboration. P.W.3 and P.W.4 stated that they signed papers at the police station and that nothing was seized in their presence. P.W.10 stated that he signed blank papers, his weighing machine was never used, and no specimen seal impression was taken in his presence.
- ii) Since P.W.10 denied conducting the weighment, the appellants argue that the alleged quantities of 411 and 417 grams were not independently established. Consequently, the prosecution allegedly failed to prove that the recovered substance fell within the "commercial quantity" category.
- iii) The appellants allege non-compliance with Section 42 because the prosecution failed to produce satisfactory contemporaneous proof of the dispatch and receipt of the prior information by



superior officers, such as the relevant dispatch registers or formal acknowledgements.

- iv) Compliance with Section 50 is disputed on the grounds that the statutory right was allegedly conveyed merely as an “option”; the signatures on the consent documents were in a different language from signatures appearing elsewhere; and the Gazetted Officer before whom the search was allegedly conducted was not examined.
- v) The chain of custody is challenged because the prosecution allegedly failed to prove the relevant Malkhana entries relating to the movement of the contraband on 07.06.2021 and 08.06.2021. The non-production of P.W.2’s brass seal and P.W.10’s denial of having received it are also relied upon.
- vi) The appellants further contend that the Chemical Examination Report was not formally proved in accordance with law and, therefore, could not establish that the substance was heroin.
- vii) Reliance is placed on P.W.5 and P.W.6 stating that the documents were prepared at the police station. The appellants argue that this contradicts the prosecution version that the weighing, sealing and seizure documents were completed at Madhusudan Setu.
- viii) The written submissions also describe P.W.5’s reference to a TATA Indica and P.W.9’s reference to a Scorpio and KTM motorcycle as a contradiction concerning the vehicles. They accordingly seek benefit of doubt and setting aside of the



conviction. Their prolonged incarceration, amounting to approximately half of the substantive sentence, is also emphasised.

III. SUBMISSIONS ON BEHALF OF THE RESPONDENT STATE:

14. On the contrary, the Learned Counsel for the Respondent State Ms. Gayatri Patra made the following submissions:

- i) The State contends that 411 grams and 417 grams of heroin were individually recovered from the appellants. Each recovery independently exceeds the commercial-quantity threshold of 250 grams applicable to heroin and attracts Section 21(c).
- ii) The evidence of P.W.1, P.W.2, P.W.5, P.W.6 and P.W.11 is stated to be consistent and trustworthy regarding interception, personal search, recovery, weighment and seizure. The absence of previous enmity is relied upon to reject the allegation of false implication.
- iii) According to the State, the hostility of P.W.3, P.W.4 and P.W.10 is not fatal because they admitted their signatures on the seizure and connected documents. A conviction can be sustained on reliable official testimony even without independent corroboration.
- iv) Once physical possession is proved, the State invokes the presumptions under Sections 35 and 54 of the NDPS Act. It submits that the appellants neither explained their possession nor adduced evidence to rebut the statutory presumptions.



- v) The State relies upon Ext. P-34, the court's forwarding letter; Ext. P-36, the SFSL acknowledgment; Ext. P-47, the Chemical Examination Report; and the material objects produced during trial to contend that the identity and chemical nature of the contraband were proved.
- vi) Compliance with Section 42 is claimed through Exts. P-37 to P-40 and the communications sent to the ACP and DCP. Compliance with Section 50 is claimed through the separate notices, Exts. P-13 and P-14, the written consent of each appellant, the requisition for a Gazetted Officer and the alleged presence of ACP S.N. Muduli during the search.
- vii) The State maintains that safe custody under Section 55 was proved through P.W.11, P.W.7, P.W.8 and the Malkhana record. It further relies on Ext. P-45, the report submitted to the DCP on 07.06.2021, to establish compliance with Section 57. It seeks dismissal of the appeal and affirmance of the minimum statutory sentence.

IV. ANALYSIS OF THE JUDGMENT OF THE COURT BELOW:

15. The Learned Trial Court, upon the perusal of the facts of the case made the following observations:

- i) The judgment is structured and not wholly unreasoned. It identifies seven issues: compliance with Sections 41-42, Section 50, Sections 100 and 165 CrPC, production of the brass seal, hostile independent witnesses and contradictions, Section 55, and Section 57.



- ii) On Section 42, the Trial Court relied upon the Station Diary and General Diary entries, the command certificate and official communications. However, paragraph 2.1 records receipt of information at 6:55 P.M., although the subsequent analysis records it at about 1:01 P.M. and the raid at 1:55 P.M. The former appears to confuse the time of the FIR with the time of receipt of prior information.
- iii) Some communications were marked only as “X”, “X-1” and “Y” for identification, whereas the judgment later describes the letters as exhibits admitted without objection. This aspect required more precise treatment, although Exts. P-37 to P-41 otherwise provided documentary support for the prosecution’s prior-information narrative.
- iv) On Section 50, the Court accepted the separate notices, written responses and the evidence regarding the ACP’s presence. It rejected the signature discrepancy because the defence did not prove that the signatures were not genuine. However, it did not closely examine the difference between consent to be searched before a Magistrate and the eventual search before a Gazetted Officer, or the evidentiary effect of not examining the ACP.
- v) The principal weakness is the Court’s conclusion that the official witnesses were consistent. P.W.1 admitted that the packets had already been recovered when he returned with the weighman. P.W.5 stated that the documents were prepared at the police station. P.W.6 similarly stated that the documents and signatures



were completed at the police station and gave a materially different account of which packets were recovered from the motorcycle rider and car occupants. These parts of the evidence were not individually reconciled.

- vi) The Court correctly noted that official testimony is not legally unacceptable merely because independent witnesses turn hostile. Nevertheless, P.W.3, P.W.4 and P.W.10 did more than simply fail to support the prosecution: they affirmatively stated that nothing was seized in their presence, and P.W.10 denied that his machine was used or that the seal was entrusted to him. The judgment treated their admission of signatures as sufficient without examining the circumstances in which they claimed those signatures were obtained.
- vii) The Court gave a comparatively detailed account of the production of sealed packets before the S.D.J.M., judicial sampling, forwarding to SFSL and production of the material objects. This supports the chain after production before the Magistrate. The less-developed portion is the period between the alleged spot seizure and judicial production, particularly in view of P.W.10's denial, non-production of P.W.2's seal, P.W.11's inability to state where her resealing seal was kept, and the absence of a Malkhana-out number.
- viii) The broad contention that the Chemical Examination Report was not proved is not borne out on the face of the judgment: it was marked Ext. P-47, reproduced in the judgment and connected with Exts. P-34 and P-36. Any appellate objection would therefore have



to identify a specific defect in its mode of admission or its connection with the seized samples.

- ix) The alleged contradiction involving P.W.9's Scorpio and KTM motorcycle appears comparatively weak because P.W.9 was describing a separate seizure conducted at Mayurbhanj on 09.06.2021, not the original interception at Madhusudan Setu. This does not eliminate the other contradictions concerning the preparation of documents and the actual recovery.
- x) The judgment contains numerical and statutory slips: it refers at one place to 838 grams instead of 828 grams; frames the principal question around 1.038 kilograms even though 210 grams were attributed to the separately proceeded-against CCL; and, after correctly reproducing Section 57's forty-eight-hour requirement, later refers to seventy-two hours. Since the report was submitted the next day, the Section 57 error may not independently affect the result.
- xi) Overall, the conviction is supported by the seizure documents, judicial sampling order, material objects and Ext. P-47. Its principal appellate vulnerability is that the finding that the official evidence was "clear, cogent and consistent" was recorded without analysing the specific contradictions emerging from the cross-examinations and the affirmative repudiation of the seizure and weighment by all three independent witnesses.



V. THIS COURT'S REASONING AND ANALYSIS:

16. Heard Learned Counsel for the Parties and perused the documents placed before this Court.
17. The present appeal calls in question the judgment of conviction and order of sentence dated 17.10.2025 passed by the learned 2nd Additional Sessions Judge-cum-Special Judge, Cuttack in G.R. (Special) Case No.15 of 2021, whereby the appellants have been convicted under Section 21(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985. The principal question is whether the prosecution has proved, beyond reasonable doubt, that the respective quantities of contraband were recovered from the persons of the appellants in the manner alleged and that the articles so recovered remained identifiable and free from tampering until their production before the learned Magistrate.
18. While dealing with an appeal against conviction, this Court is required to independently examine the evidence and determine whether the findings returned by the learned Trial Court are borne out from the record. In *Majjal v. State of Haryana*¹, the Supreme Court reiterated that a judgment of the first appellate court must disclose due consideration of the vital evidence and the material submissions which go to the root of the matter. The gravity of an offence cannot relieve the appellate court of this obligation. The Court held as follows:

¹ (2013) 6 SCC 798



“In this case what strikes us is the cryptic nature of the High Court’s observations on the merits of the case. The High Court has set out the facts in detail. It has mentioned the names and numbers of the prosecution witnesses. Particulars of all documents produced in the court along with their exhibit numbers have been mentioned. Gist of the trial court’s observations and findings are set out in a long paragraph. Then there is a reference to the arguments advanced by the counsel. Thereafter, without any proper analysis of the evidence almost in a summary way the High Court has dismissed the appeal. The High Court’s cryptic reasoning is contained in two short paragraphs. We find such disposal of a criminal appeal by the High Court particularly in a case involving charge under Section 302 of the IPC where the accused is sentenced to life imprisonment unsatisfactory. It was necessary for the High Court to consider whether the trial court’s assessment of the evidence and its opinion that the appellant must be convicted deserve to be confirmed. This exercise is necessary because the personal liberty of an accused is curtailed because of the conviction. The High Court must state its reasons why it is accepting the evidence on record. The High Court’s concurrence with the trial court’s view would be acceptable only if it is supported by reasons. In such appeals it is a court of first appeal. Reasons cannot be cryptic. By this, we do not mean that the High Court is expected to write an unduly long treatise. The judgment may be short but must reflect proper application of mind to vital evidence and important submissions which go to the root of the matter. Since this exercise is not conducted by the High Court, the appeal deserves to be remanded for a fresh hearing after setting aside the impugned order be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him.”



19. It is equally well settled that the NDPS Act is a stringent enactment carrying severe punishment and incorporating a reverse burden of proof. The statutory safeguards governing search, seizure and custody must, therefore, receive careful scrutiny. In *Noor Aga v. State of Punjab*², the Supreme Court held that the presumptions under Sections 35 and 54 become operative only after the prosecution proves the foundational facts, including possession of the contraband, beyond reasonable doubt.
20. The NDPS Act was enacted to address a grave social menace, but the seriousness of the offence cannot dilute the standard of proof. Where the prosecution invokes a stringent penal provision carrying a mandatory minimum sentence, the Court must be satisfied that the evidence excludes reasonable doubt as to search, seizure, identity and possession. On the evidence presently available, that standard has not been met. The appellants are, therefore, entitled to the benefit of doubt.

VI. CONCLUSION:

21. Accordingly, the Criminal Appeal is **allowed**. The judgment of conviction and order of sentence dated 17.10.2025 passed by the learned 2nd Additional Sessions Judge-cum-Special Judge, Cuttack in G.R. (Special) Case No.15 of 2021, convicting the appellants under Section 21(c) of the NDPS Act, are hereby set aside.
22. The appellants, namely, Sk. Tamir and Sk. Ersat, are acquitted of the charge under Section 21(c) of the NDPS Act. They shall be released



forthwith, unless their detention is required in connection with any other case. Their bail bonds, if any, shall stand discharged. Any fine amount deposited pursuant to the impugned judgment shall be refunded in accordance with law.

23.Interim order, if any, passed earlier stands vacated.

(Dr. Sanjeeb K Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated the 7th August, 2026/-