

**IN THE HIGH COURT OF ORISSA AT CUTTACK****JCRLA No.132 of 2023**

(In the matter of an appeal under Section 374(2) of the Code of Criminal Procedure, 1973).

Asish Kumar *Appellant (s)*
-versus-
State of Odisha *Respondent (s)*

Advocates appeared in this case through Hybrid Arrangement Mode:

For Appellant (s) : *Mr. S. Rout, Adv.*

For Respondent(s) : *Ms. Sarita Moharana, ASC*

CORAM:

DR. JUSTICE SANJEEB K PANIGRAHI

DATE OF HEARING: -31.03.2026

DATE OF JUDGMENT: -17.04.2026

Dr. Sanjeeb K Panigrahi, J.

1. The appellant is assailing the judgment of conviction and order of sentence dated 10.08.2023 passed by the learned Additional Sessions Judge, Chatrapur, Ganjam in G.R. Case No. 30 of 2019 (N), whereby the appellant was convicted for the offence punishable under Section 20(b)(ii)(C) of the NDPS Act and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 1,00,000/-, and in default of payment of fine, to undergo rigorous imprisonment for a further period of one year.



I. FACTUAL MATRIX OF THE CASE:

2. The case of the prosecution is that on 21.07.2019, S.I. of Police Biswajit Nayak of Hinjili Police Station lodged a written report before the IIC, Hinjili Police Station, stating that at about 4:15 p.m., he, along with other police personnel, was conducting M.V. checking at Kandara Chhak. At about 6:30 p.m., he noticed a black Chevrolet car bearing registration No. DL3CBS4300 coming from the Aska side on N.H. 59 at high speed. On seeing the police, the said car attempted to take a U-turn and was intercepted.
3. On search, three persons, including the driver, were found inside the car, and a strong smell of ganja was emanating from the vehicle. On being asked, the occupants of the car gave prevaricating statements and disclosed their names and addresses as Asish Kumar, son of Mukesh Chouhan, of Village Madapur Debash, P.O. Ranikheda, P.S. Kanjhawala, New Delhi, District Rohini, who was the driver of the car; Nanhak Ray, son of Jhamal Ray, of Village Mirampur, Raghua, P.S. Raghampur, District Vaishali, State Bihar; and Himansu @ Suraj Kumar, son of Rambabu Mandal, of Village Danau, P.S. Karara, District Muzaffarpur, State Bihar. They further disclosed that they were carrying contraband ganja from Kandhamal to Delhi for the purpose of sale.
4. Thereafter, the informant intimated the IIC about the detection of the case and guided him to the spot where the persons and the vehicle loaded with ganja were intercepted.



5. The informant directed A.S.I. R.S. Gouda to proceed to the Police Station to bring the investigation kit with a laptop and to arrange a weighman, a weighing machine, and stitching and sealing materials, and also called two passersby, namely Jugal Kishore Panda and Koramani Roula, to be witnesses to the search and seizure.
6. The Executive Magistrate-cum-Tahasildar, Hinjili, arrived at the spot at 8:00 p.m. as per the direction of the S.D.M., Chatrapur, Ganjam, in response to the requisition of the IIC, and at 8:10 p.m., A.S.I. R.S. Gouda arrived at the spot along with the weighman Sitaram Badtiya, a digital weighing machine, stitching and sealing materials, a personal brass seal, and a laptop. The weighing machine was tested in the presence of the Executive Magistrate, witnesses, and the accused persons, and thereafter, the informant apprised the accused persons of their right under Section 50 of the NDPS Act, whereupon they expressed their willingness to be searched in the presence of the Executive Magistrate.
7. Upon search, one big plastic gunny bag containing contraband ganja was recovered from the dickey of the car and another small plastic gunny bag containing ganja was recovered from the box behind the rear seat of the car. On being asked, the accused persons could not produce any licence or authority for possession of the contraband ganja.
8. Two plastic bags containing ganja were brought out from the car and weighed by the weighman in the presence of the witnesses, the



Executive Magistrate, and the accused persons, one after another, after making a homogeneous mixture. The big plastic gunny bag bearing the marking 'Bharat Spice' was found to contain contraband ganja weighing 36 kg (including the weight of the gunny bag), and the small plastic bag bearing the marking 'Premium Quality Dal Badak' was found to contain 9 kg (including the weight of the gunny bag).

9. The informant prepared the weighment slip, packed and sealed the bulk packets, labelling them as Ext. A and Ext. B, using his personal brass seal and obtaining the signatures of the accused persons, witnesses, weighman, and the Executive Magistrate. He also prepared the specimen seal impression, marked as Ext. C, and seized the contraband ganja along with the Chevrolet car under a seizure list. The weighing machine was left in zima of the weighman and the personal brass seal in zima of the Executive Magistrate after executing a zimanama. He then prepared a written report and submitted the same before the IIC along with the seized articles and the accused persons.
10. On the basis of the written report, the IIC of Hinjili Police Station registered a case under Section 20(b)(ii)(C) of the NDPS Act and directed S.I. P.K. Das to take up investigation of the case.
11. The Investigating Officer, during the course of investigation, examined the complainant and recorded his statement, examined the seizure witnesses and the Executive Magistrate, verified the seized



articles, and kept them in his safe custody. He arrested the accused persons and forwarded them for medical examination.

12. The Investigating Officer further produced the seized articles before the Special Court, Chatrapur, and as per the order of the Special Court, the learned S.D.J.M. drew samples from the bulk ganja and sent the sample packets to the R.F.S.L. for chemical examination. The Investigating Officer also ascertained the ownership of the vehicle from the Transport Authority, Ganjam, and kept the bulk ganja in the police Malkhana as per the order of the learned S.D.J.M.
13. After completion of investigation, he submitted charge-sheet under Section 20(b)(ii)(C) of the NDPS Act against the accused persons, namely Asish Kumar, Nanhak Ray, and Himansu @ Suraj Kumar.
14. As the other two accused persons, namely Nanhak Ray and Himansu @ Suraj Kumar, did not appear before the Court during trial, the learned defence counsel filed a petition to split up the case record against the absentee accused persons. Considering that the present accused, namely Asish Kumar, was suffering for want of progress in the case, the case against the said absentee accused persons was split up vide order dated 13.09.2022.
15. The learned Additional Sessions Judge, Chatrapur, Ganjam, upon appreciation of the evidence on record, held that the prosecution had proved that 45 kg of contraband ganja was recovered from the vehicle in which the present appellant was travelling as the driver and that he was in conscious possession of the same. The learned court below



relied on the evidence of the informant (P.W.7), the Executive Magistrate (P.W.10), and the Investigating Officer (P.W.12), along with the chemical examination report confirming the seized substance to be ganja. It was further observed that the failure of independent witnesses to support the prosecution case and minor discrepancies did not affect the prosecution case. The learned court below also held that the alleged procedural lapses, including non-production of the brass seal, were not sufficient to disbelieve the prosecution case in the absence of any evidence of tampering. Placing reliance on the presumptions under Sections 35 and 54 of the NDPS Act, it was concluded that the appellant had failed to rebut the presumption of conscious possession and was accordingly convicted under Section 20(b)(ii)(C) of the NDPS Act.

16. Being aggrieved by the impugned judgment of conviction and order of sentence dated 10.08.2023, the present appeal has been filed.

II. SUBMISSIONS ON BEHALF OF THE APPELLANT:

17. Learned counsel for the appellant made the following submissions in support of his contentions:

- i. It was submitted that the appellant is innocent, had no knowledge of the alleged seized bags or their contents, and that nothing was recovered from his possession. It was contended that he has been falsely implicated in the present case.
- ii. It was further submitted that the sentence imposed is severe and that the question of proportionality of sentence is a question of law.



- iii. It was contended that there is no cogent evidence to establish recovery of any contraband from the possession of the appellant. The prosecution has failed to prove that the seized bags were recovered from his conscious possession, and mere presence in the vehicle is insufficient to establish such possession.
- iv. It was submitted that the seizure list and the zimanama do not bear any brass seal impression, and that the brass seal was also not produced before the Court at the time of production of the bulk ganja.
- v. It was further submitted that the presence of the Executive Magistrate (P.W.10) at the spot is doubtful and that he had no authority to act as an Executive Magistrate, as revealed from his cross-examination.
- vi. It was also submitted that the notice and option given under Section 50 of the NDPS Act do not bear the signature of any Executive Magistrate or independent witness, thereby casting serious doubt on compliance with Section 50 of the NDPS Act.
- vii. It was further submitted that the ownership of the vehicle was not properly investigated, as the owner of the car was neither examined nor interrogated.

III. SUBMISSIONS ON BEHALF OF THE RESPONDENT:

18. Per contra, learned counsel for the respondent made the following submissions in support of his contentions:



- i.** It was submitted that the learned Additional Sessions Judge, Chatrapur rightly held that the appellant, along with two absconding accused persons, was travelling at the time of M.V. checking/nakabandi at Kandara Chhak, and that 45 kg of contraband ganja kept in two gunny bags was recovered from the vehicle bearing registration No. DL3CBS4300.
- ii.** It was further submitted that the said vehicle is a blacklisted vehicle as per the information given by the R.T.O., Chatrapur, and that the accused, in his examination under Section 313 Cr.P.C., could not satisfactorily explain how he came into possession of the offending vehicle.
- iii.** It was submitted that the evidence of the informant (P.W.7) has been corroborated by the evidence of P.W.3 and P.W.11 regarding the seizure of contraband ganja, and that there is no material on record to disbelieve the evidence of the official witnesses. It was further submitted that the evidence of P.W.10 (Executive Magistrate), who is not a police official, also corroborates the seizure of ganja and the vehicle at the spot, and therefore cannot be discarded in the absence of any clinching material on record.
- iv.** It was submitted that the materials on record establish that the accused persons were transporting contraband ganja with full knowledge that they were dealing with it illegally.
- v.** It was contended that from a conjoint reading of Sections 35 and 54 of the NDPS Act, once possession is established, a presumption



arises that the accused has committed the offence, unless the contrary is proved. According to Section 35 of the Act, the Court shall presume the existence of a culpable mental state unless the accused proves otherwise.

- vi. It was further submitted that in the present case, not only possession but conscious possession has been established, and the accused has failed to prove that he had no knowledge about the possession and transportation of ganja in the offending vehicle.
- vii. It was submitted that the seizure of contraband ganja from the possession of the accused was duly proved, and that the evidence adduced was clear, cogent, trustworthy, and reliable, warranting conviction under Section 20(b)(ii)(C) of the NDPS Act. It was contended that no interference is called for with the impugned judgment.

IV. FINDINGS OF THE LEARNED ADDITIONAL SESSIONS JUDGE, CHATRAPUR, GANJAM:

- 19. The learned Additional Sessions Judge, Chatrapur, Ganjam, upon consideration of the evidence on record, held that the prosecution has proved that on 21.07.2019 at about 6:30 p.m., during M.V. checking at Kandara Chhak, the accused, along with two absconding co-accused persons, was travelling in the vehicle bearing registration No. DL3CBS4300, from which 45 kg of contraband ganja, kept in two gunny bags, was recovered.



20. The court relied upon the evidence of the informant (P.W.7), which was found to be corroborated by P.W.3 and P.W.11 with regard to the interception of the vehicle and seizure of the contraband ganja. The evidence of the Executive Magistrate (P.W.10), who is not a police official, was also accepted as supporting the prosecution case regarding the search and seizure at the spot.
21. The trial court observed that the non-support of independent witnesses does not affect the prosecution case when the evidence of official witnesses is otherwise found to be clear, cogent, trustworthy and reliable.
22. It was further held that the discrepancies pointed out by the defence, including absence of brass seal impression in the seizure list and zimanama, are minor and do not go to the root of the case. The court also rejected the contention regarding non-production of the brass seal. It further held that the doubts raised regarding the presence or authority of the Executive Magistrate are not sufficient to discard the prosecution case. The court also noted that the seized contraband was produced before the court without undue delay, that the seals were found intact, and that the chemical examination report confirmed that the seized substance was ganja.
23. The trial court further held that the accused, being the driver of the offending vehicle, must have had knowledge of the contraband loaded therein and cannot escape on the plea of innocence. It was observed that the accused failed to satisfactorily explain, in his



examination under Section 313 Cr.P.C., how he came into possession of the offending vehicle, which was found to be a blacklisted vehicle as per the report of the R.T.O. The court, placing reliance on Sections 35 and 54 of the NDPS Act, held that once possession is established, a presumption arises regarding culpable mental state and conscious possession, which the accused failed to rebut.

24. Accordingly, upon a conjoint consideration of the oral and documentary evidence, the trial court held that the prosecution has successfully proved the seizure of contraband ganja from the possession of the accused and that the evidence adduced is clear, cogent, trustworthy and reliable.
25. The accused was found guilty of the offence under Section 20(b)(ii)(C) of the NDPS Act. Taking into account that the offence involved commercial quantity, the court imposed a sentence of rigorous imprisonment for ten years along with a fine of Rs. 1,00,000/-, and in default of payment of fine, to undergo rigorous imprisonment for a further period of one year. The period of detention already undergone was directed to be set off under Section 428 Cr.P.C.

V. COURT'S REASONING AND ANALYSIS:

26. Heard learned counsel for the parties and perused the material placed on record.
27. The primary question that arises for consideration in the instant matter is whether the prosecution has been able to establish the recovery of contraband ganja from the vehicle in which the appellant



was travelling and whether the appellant was in conscious possession of the same.

28. Before advertng to the facts of the present case, this Court deems it apposite to set out the legal framework governing prosecutions under the Narcotic Drugs and Psychotropic Substances Act, 1985, particularly with respect to possession and the standard of proof required to establish the charge under Section 20(b)(ii)(C) of the Act.
29. Section 20 of the NDPS Act prescribes punishment for the production, manufacture, possession, sale, purchase, transport, import inter-State, export inter-State, or use of cannabis. Clause (b)(ii)(C) thereof provides that where such offence involves commercial quantity, the accused shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years, and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees.
30. The term 'commercial quantity' in relation to cannabis (ganja) is defined under the NDPS Act read with Notification S.O. 1055(E) dated 19.10.2001, whereby any quantity of ganja equal to or exceeding 20 kilograms constitutes a commercial quantity. The possession of 45 kg of ganja, as alleged in the present case, squarely falls within the category of commercial quantity.
31. In order to establish the charge, it is the burden of the prosecution to establish that the accused was in conscious and intentional possession



of the contraband, that the substance was indeed ganja, and that the quantity involved was a commercial quantity.

32. The law on the concept of 'conscious possession' is well settled. Such possession is not mere physical custody but requires the element of intentional holding and mental awareness. The Supreme Court in *Madan Lal v. State of Himachal Pradesh*¹ observed the following in this regard:

"19. Whether there was conscious possession has to be determined with reference to the factual backdrop. The facts which can be culled out from the evidence on record are that all the accused persons were travelling in a vehicle and as noted by the trial court they were known to each other and it has not been explained or shown as to how they travelled together from the same destination in a vehicle which was not a public vehicle.

20. Section 20(b) makes possession of contraband articles an offence. Section 20 appears in Chapter IV of the Act which relates to offences for possession of such articles. It is submitted that in order to make the possession illicit, there must be a conscious possession."

33. In *Abdul Rashid Ibrahim Mansuri v. State of Gujarat*,² the Supreme Court observed that once physical possession of the contraband is proved, the burden of proof shifts to the accused to establish that he had no knowledge about the possession of such substance. The standard of proof required for such rebuttal is as contemplated under Section 35(2) of the NDPS Act. It was further observed that if, on

¹ (2003) 7 SCC 465.

² 2000 (2) SCC 513.



appraisal of the entire evidence, the Court does not entertain a reasonable doubt that the accused had knowledge of the nature of the substance, he is not entitled to acquittal. However, if the Court entertains a strong doubt regarding the accused's awareness of the nature of the substance, it would be a miscarriage of criminal justice to convict him.

34. In the same vein, in *Rakesh Kumar Raghuvanshi v. The State of Madhya Pradesh*³, the Supreme Court reiterated:

"16. ...It is the burden of the prosecution to establish that the contraband was seized from the conscious possession of the accused. Only when that aspect has been successfully proved by the prosecution, the onus will shift to the accused to account for the possession legally and satisfactorily.

...

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."

35. In this context, it is imperative to advert to Sections 35 and 54 of the NDPS Act. Section 35 provides for presumption of culpable mental state in any prosecution for an offence under this Act which requires a

³ 2025 INSC 96.



culpable mental state of the accused, but it further provides that it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence. The proviso clarifies that a fact shall be said to be proved when the Court believes it to exist beyond reasonable doubt, and for the purposes of this section, the accused discharges the burden by establishing such fact on a preponderance of probabilities.

36. Section 54 of the NDPS Act provides that in trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under the Act in respect of any narcotic drug, psychotropic substance, controlled substance or conveyance for the possession of which he fails to account satisfactorily.
37. In *Noor Aga v. State of Punjab*⁴, it was elucidated that statutory presumptions do not dispense with the prosecution's initial duty to prove its case beyond reasonable doubt. Such presumptions, including that of culpable mental state arising from possession of illicit articles, are rebuttable, and the burden cast upon the accused to disprove the same is to be discharged on the standard of preponderance of probability, and not beyond reasonable doubt.
38. Similarly, in *Gangadhar Alias Gangaram v. State of Madhya Pradesh*⁵, it was observed as replicated hereinunder:

⁴ (2008) 16 SCC 417.

⁵ Criminal Appeal No. 504 of 2020.



“9. The presumption against the accused of culpability under Section 35, and under Section 54 of the Act to explain possession satisfactorily, are rebuttable. It does not dispense with the obligation of the prosecution to prove the charge beyond all reasonable doubt. The presumptive provision with reverse burden of proof, does not sanction conviction on basis of preponderance of probability. Section 35(2) provides that a fact can be said to have been proved if it is established beyond reasonable doubt and not on preponderance of probability. That the right of the accused to a fair trial could not be whittled down under the Act was considered in *Noor Aga vs. State of Punjab...*”

39. Section 50 of the NDPS Act is also relevant to the present case and mandates that when a police officer is about to conduct a personal search of a person, he shall inform the person of his right to be searched in the presence of a Gazetted Officer or a Magistrate if so required.
40. The Supreme Court, in *State of Punjab v. Baldev Singh*⁶, held that the requirement of Section 50 is mandatory where a personal search of an individual is being conducted. However, the crucial distinction drawn by the Supreme Court in a series of subsequent decisions is that Section 50 applies only to personal searches of individuals, and does not extend to searches of vehicles or premises. This view was affirmed in *State of Himachal Pradesh v. Pawan Kumar*.⁷
41. It is also important at this juncture to note that Section 43 of the NDPS Act empowers any officer of the departments mentioned in Section 42

⁶ (1999) 6 SCC 172.

⁷ AIR 2005 SUPREME COURT 2265.



to seize and detain any narcotic drug or psychotropic substance found in any public place or in transit. It clarifies that a public conveyance is included in the expression 'public place' for this purpose. Where a seizure is effected in a vehicle intercepted on a public road, the mandate of Section 43 is attracted, and the requirement of prior written information does not apply to such a case.

42. Turning now to the facts of the present case, this Court must examine whether the prosecution has established beyond reasonable doubt the recovery of 45 kg of contraband ganja from the vehicle bearing registration No. DL3CBS4300 in which the appellant was travelling as the driver.
43. The informant, S.I. Biswajit Nayak (P.W.7), has testified in detail about the interception of the vehicle at Kandara Chhak during M.V. checking, the strong smell of ganja emanating from the vehicle, the disclosure made by the accused persons regarding their identity and the fact that they were carrying contraband ganja, the arrival of the Executive Magistrate, the weighment of the seized bags, and their packing, sealing, and labelling. His testimony has been corroborated by P.W.3 and P.W.11 with respect to the interception and seizure. P.W.10, the Executive Magistrate-cum-Tahasildar, who is not a police official and therefore cannot ordinarily be said to be an interested witness, has also corroborated the fact of arrival at the spot, the weighment, the sealing, and the presence of the accused persons.



44. The chemical examination report from the R.F.S.L. has confirmed that the substance seized is ganja. The chain of custody of the sample packets, from the seizure at the spot to their submission before the S.D.J.M, the drawing of samples, and their transmission to the R.F.S.L., has been established through the evidence of the Investigating Officer. When the bulk ganja was produced before the Special Court, the seals were found to be intact, and there is no material on record to suggest any tampering with the seized contraband.
45. This Court is accordingly satisfied that the prosecution has established beyond reasonable doubt the factum of recovery of 45 kg of contraband ganja from the vehicle in which the appellant was travelling as the driver. There is no case made out for intervention in this regard.
46. Further, as regards whether the appellant, as the driver of the vehicle, was in conscious possession of the seized contraband, the appellant contends that he had no knowledge of the contents of the bags, and that he is merely an innocent driver who was falsely implicated.
47. This Court, having regard to the material placed on record, finds it impossible to accept this plea. The appellant was not merely a co-passenger but was the driver of the vehicle. Further, the quantity of ganja recovered i.e. 45 kg is substantial and cannot be described as a trifling amount that could be smuggled without the knowledge of the driver. The ganja was packed in two large gunny bags, one weighing



36 kg and the other weighing 9 kg, kept in the dickey and the box behind the rear seat respectively. It is inconceivable that such a massive consignment could have been loaded into and transported in a vehicle without the knowledge of the person driving it. Moreover, the strong smell of ganja that was emanating from the vehicle upon interception has been deposed to by P.W.7, a police officer, and has not been effectively challenged in cross-examination. A pungent smell of ganja of such intensity from 45 kg of the substance could not have escaped the notice of the driver for the duration of a journey from Kandhamal to Delhi.

48. Further, when called upon to produce a licence or authority for possession of the contraband, the appellant failed to do so. Under Section 54 of the NDPS Act, the failure of the accused to account satisfactorily for the possession of the contraband gives rise to a presumption of commission of the offence.
49. Moreover, on a perusal of the record, it is evident that the vehicle was found to be a blacklisted vehicle as per the information furnished by the R.T.O., Chatrapur. When examined under Section 313 of the Cr.P.C., the appellant could not satisfactorily explain how he came into possession of such a vehicle or the purpose for which he was driving it. The driving of a blacklisted vehicle loaded with commercial quantity contraband, without any plausible explanation, further reinforces the inference of conscious and guilty participation.



50. This Court accordingly holds that the prosecution has established conscious possession and that the appellant was fully aware of the nature and contents of the contraband being transported, was actively engaged in its transportation, and cannot seek shelter behind a claim of ignorance.
51. As regards the non-production of the brass seal, it is evident from the record that the seizure was conducted in the presence of the Executive Magistrate as well as independent witnesses, and the sealing of the seized contraband was carried out at the spot after due compliance with procedural safeguards. The brass seal, after use, was handed over in zima to the Executive Magistrate. The mere non-production of the brass seal during trial does not, by itself, cast any doubt on the prosecution case, particularly when the bulk contraband was produced before the Court with seals found intact and there is no material on record to suggest that the seized articles were tampered with or substituted. In the absence of any evidence indicating tampering, such omission remains an inconsequential irregularity which does not go to the root of the prosecution case.
52. Insofar as the challenge to the presence and authority of the Executive Magistrate (P.W.10) is concerned, the evidence on record indicates that he had reached the spot pursuant to requisition made through the S.D.M., Chatrapur, and has supported the prosecution version on all material particulars relating to the search and seizure. His testimony has withstood cross-examination, and nothing substantial has been



elicited to discredit his presence at the spot. Even otherwise, it is pertinent to note that the recovery in the present case was effected from the vehicle and not from the person of the accused. Therefore, the presence of an Executive Magistrate, though lending additional assurance to the prosecution case, was not a mandatory requirement so as to vitiate the proceedings in its absence or upon minor discrepancies regarding his authority.

53. As regards the alleged non-compliance with Section 50 of the NDPS Act, it is well settled that the said provision applies only in cases of personal search of an individual and not to the search of a vehicle. In the present case, the recovery of contraband was effected from the dickey and the compartment behind the rear seat of the vehicle and not from the person of the appellant. Therefore, any alleged infirmity in the notice under Section 50 does not affect the validity of the seizure.
54. The contention regarding non-examination of the owner of the vehicle also does not advance the appellant's case. The ownership of the vehicle was duly ascertained from the Transport Authority, Ganjam, and the vehicle was found to be blacklisted. The appellant has failed to demonstrate how non-examination of the owner has caused any prejudice to his defence. At best, this amounts to a lapse in investigation which does not, in the facts and circumstances of the case, undermine the otherwise cogent and reliable evidence on record.



55. Once conscious possession stands established, the presumptions under Sections 35 and 54 of the NDPS Act come into operation. The burden then shifts to the appellant to rebut the said presumptions by establishing, on a preponderance of probabilities, that he had no knowledge of the contraband. In the present case, the appellant has merely taken a plea of denial and has not adduced any evidence, either oral or documentary, to probabalise his defence. He has failed to explain his presence in the vehicle, the purpose of the journey, or the circumstances in which he came to be in control of a vehicle carrying commercial quantity of contraband. Such bare denial is wholly insufficient to discharge the burden cast upon him under the statute.

VI. CONCLUSION:

56. In view of the foregoing analysis, this Court is of the considered opinion that the prosecution has established beyond reasonable doubt the recovery of 45 kg of contraband ganja from the vehicle being driven by the appellant, and that the appellant was in conscious possession of the same with full knowledge of its nature and with the intent to transport it for the purpose of sale.

57. The statutory presumptions under Sections 35 and 54 of the NDPS Act stand attracted and have not been rebutted by the appellant. The procedural objections raised on behalf of the appellant, upon careful examination, are found to be without substance and are hereby rejected.



58. The impugned judgment of conviction and order of sentence dated 10.08.2023 passed by the learned Additional Sessions Judge, Chatrapur, Ganjam in G.R. Case No. 30 of 2019 (N), convicting the appellant for the offence punishable under Section 20(b)(ii)(C) of the NDPS Act and sentencing him to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 1,00,000/- (with a default sentence of one year rigorous imprisonment) calls for no interference and is accordingly confirmed.
59. Accordingly, the Jail Criminal Appeal stands **dismissed**.
60. The Interim order, if any, passed earlier stands vacated.

(Dr. Sanjeeb K Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated the 17th April, 2026/-