



2026:CGHC:19266-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 2151 of 2025

Sheikh Rehman Qureshi S/o Sheikh Ramzan Qureshi, Aged About 42 Years R/o Kashiram Nagar, Near Jaitkhambh Police Station Telibandha, Raipur, District Raipur (C.G.)

...Appellant

versus

State of Chhattisgarh Through Station House Officer, Police Station-Telibandha, Raipur, District Raipur (C.G.)

... Respondent

(Cause-title taken from Case Information System)

For Appellant	:	Mr. Ali Afzaal Mirza, Advocate
For State/Respondent	:	Mr. Shaleen Singh Baghel, Government Advocate

Hon'ble Shri Ramesh Sinha, Chief Justice
Hon'ble Shri Ravindra Kumar Agrawal, Judge

Judgment on Board

Per Ramesh Sinha, Chief Justice

27.04.2026

1. Heard Mr. Ali Afzaal Mirza, learned counsel for the appellant as well as Mr. Shaleen Singh Baghel, learned Government Advocate, appearing for the State/respondent.

2. Learned counsel for the appellant submits that, vide order dated 17.03.2026, the appellant was granted ad-interim bail by this Court for a limited purpose, namely, to enable him to attend the marriage ceremony of his daughter.
3. It is further submitted that pursuant to the said order, the appellant was released for the aforesaid purpose and thereafter, in compliance with the terms and conditions of the order as well as the directions of the authorities, he was again taken into custody and sent to jail.
4. Learned counsel submits that at present the appellant is confined in judicial custody.
5. The appellant has preferred the present appeal under Section 415(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, 'BNSS'), assailing the legality and correctness of the impugned judgment dated 15.09.2025 passed by the learned Special Judge (N.D.P.S. Act), Raipur, District Raipur (C.G.), in Special Sessions Case No.172/2024. By the said judgment, the appellant has been held guilty for the offence punishable under Section 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS Act') and has been sentenced to undergo rigorous imprisonment for a period of 15 years along with a fine of Rs.1,50,000/-, with a stipulation that in default of payment of fine, he shall further undergo rigorous imprisonment for a period of six months.

6. The prosecution story of the case, as unfolded before the learned Trial Court, is that on 04.05.2024, the Investigating Officer, Station House Officer, Police Station Telibandha, Raipur, received secret information from an informant that a person standing beneath the Kashiram Nagar overbridge, Telibandha, Raipur, wearing a blue-coloured T-shirt and carrying a black coloured bag, was in possession of and attempting to sell contraband narcotic and psychotropic substances to prospective customers.
7. Pursuant to the said information, which was duly recorded in the Rojnamcha Sanha, the services of independent witnesses namely Sanjay Nishad (PW-1) and Sanjay Bohare (PW-2) were secured through Constable Kamlesh Singh (PW-5). After their availability, they were apprised of the secret information and, with their consent, notices under Section 160 Cr.P.C. were issued to them.
8. Thereafter, a preliminary panchnama regarding the secret information (Ex.P/3) was prepared, along with proceedings relating to inability to obtain search warrant (Ex.P/4) and verification of the information (Ex.P/05). The mandatory notice under Section 50 of the NDPS Act (Ex.P/06) was served upon the suspect, informing him of his legal right to be searched before a Gazetted Officer or Magistrate. His consent for search was recorded through consent panchnama (Ex.P/7). The search operation was conducted in accordance with law by the

Investigating Officer along with police staff, witnesses, and the accused, and separate search panchnamas were prepared including search of self and police party (Ex.P/8), search of police vehicle (Ex.P/9), search of witnesses (Ex.P/10), search of the suspect (Ex.P/11), and search of the bag in possession of the accused (Ex.P/12). During such search, contraband substance was allegedly recovered from the black coloured bag carried by the accused, and the recovery panchnama (Ex.P/13) was prepared.

- 9.** The seized substance was identified as narcotic and psychotropic substance and duly verified under identification panchnama (Ex.P/14). The weight of the seized material was recorded through weight panchnama (Ex.P/15), and seizure proceedings were formalised through seizure memo and sample seal panchnama (Ex.P/16) and sealing panchnama (Ex.P/18).
- 10.** It is the prosecution case that upon completion of seizure proceedings, the accused was arrested after recording reasons of arrest under panchnama (Ex.P/19) and arrest memo (Ex.P/20), and the arrest information was communicated to his family members. The crime detail form (Ex.P/21) and police statement of witnesses (Ex.P/22 to Ex.P/24) were also recorded. Forensic and procedural compliance was undertaken by sending samples for examination. The Drug Inspector's physical examination report (Ex.P/26) and forwarding memos (Ex.P/25, Ex.P/27) were

prepared. Samples were further sent to the Forensic Science Laboratory (Ex.P/28) and receipts of exhibits were obtained (Ex.P/29). The FSL report (Ex.P/49 & Ex.P/50) confirmed the presence of contraband substances including Dicyclomine, Tramadol and Acetaminophen.

- 11.** The Investigating Officer, S.I. Shrawan Kumar (PW-8), conducted the investigation, recorded statements of witnesses including Sanjay Nishad (PW-1), Sanjay Bohare (PW-2), Mukesh Kumar (PW-3), Chintamani Giri (PW-4), Kamlesh Singh (PW-5), Suraj Singh Chelak (PW-6), and Dharmendra Kanauje (PW-7), and submitted the final report (Ex.P/45) after completion of investigation.
- 12.** The prosecution further relied upon notices under Section 67 of the NDPS Act (Ex.P/41), information of arrest (Ex.P/42), seizure registers, rojnamcha entries (Ex.P/33-C, Ex.P/34-C to Ex.P/40-C, Ex.P/44-C), spot map forwarding memo (Ex.P/51), and other documentary evidence to establish compliance with mandatory provisions of the NDPS Act.
- 13.** Ultimately, on the basis of the aforesaid oral and documentary evidence, including testimonies of prosecution witnesses (PW-1 to PW-8) and exhibits (Ex.P/1 to Ex.P/51), the learned Trial Court found that the accused was found in conscious possession of contraband psychotropic substances and convicted him under Section 22(c) of the NDPS Act.

14. The defence, however, denied all allegations, pleaded false implication, and claimed that the entire case was fabricated, but did not adduce any defence evidence.
15. After due appreciation and critical evaluation of the entire oral as well as documentary evidence adduced by the prosecution, the learned Trial Court has held the appellant guilty of the charges levelled against him. The learned Court below, relying upon the testimonies of the prosecution witnesses as well as the documentary exhibits brought on record, has proceeded to convict the appellant and has sentenced him in the manner as indicated in the earlier part of this judgment.
16. Being aggrieved by the said judgment of conviction and order of sentence, the appellant has preferred the present appeal questioning the correctness, legality, and propriety of the impugned judgment. Hence, this appeal.
17. Mr. Ali Afzaal Mirza, learned counsel for the appellant, has made elaborate submissions assailing the impugned judgment of conviction on both factual and legal grounds, contending that the entire prosecution case is vitiated due to serious procedural lapses, non-compliance of mandatory provisions of the NDPS Act, and failure to establish a complete and unbroken chain of custody of the alleged contraband. It is submitted that the alleged seizure, sampling, and preservation of the narcotic substance were not conducted in accordance with the mandatory

requirements of Standing Order No. 1/88 dated 15.08.1988 and Standing Order No. 1/89, which govern the manner of seizure, sampling, sealing, and preparation of inventory in NDPS cases. Learned counsel submits that these Standing Orders have the force of binding procedural safeguards and any deviation therefrom renders the entire recovery proceedings doubtful. It is further submitted that there is complete non-compliance of Sections 52A and 55 of the NDPS Act, inasmuch as the inventory (Ex.P/32) does not contain the requisite particulars such as proper description, quantity, mode of packing, markings, and identifying features of the seized articles.

- 18.** It is further submitted that the sampling process itself is fundamentally defective. Out of the alleged recovery of 600 capsules, only 48 capsules were drawn and sent for FSL examination, which, according to the appellant, cannot be treated as a representative sample in law. Learned counsel submits that as per Standing Orders No. 1/88 and 1/89, where multiple packets or strips are recovered, samples are required to be drawn from each individual packet and tested appropriately before drawing any representative sample. The failure to follow such mandatory procedure, it is urged, vitiates the entire prosecution case. It is also submitted that Exhibit Ex.P/47A, which is the list of extracted samples, itself indicates that sampling was allegedly done on 04.05.2024, whereas the order of the learned JMFC for sampling and inventory was passed only

on 06.05.2024, thereby creating serious doubt regarding procedural legality and prior manipulation.

- 19.** Learned counsel further submits that there is clear violation of Section 52A of the NDPS Act, as the seized property was allegedly kept in the malkhana on 04.05.2024 and was produced for sampling before the learned Judicial Magistrate only on 06.05.2024, without any explanation for such delay. It is submitted that such delay, in NDPS matters, is fatal as the legislature has mandated prompt preparation of inventory and sampling under judicial supervision to avoid tampering. It is further pointed out that as per the deposition of PW-7 Dharmendra Kanauje (Malkhana Moharrir), the seized property received by him under Ex.P/32 was not in properly sealed condition, and there are overwritings in the register entries, which were not satisfactorily explained. It is also argued that neither the Investigating Officer nor the prosecution has proved that the seal remained intact throughout the chain till the FSL examination. It is further submitted that the prosecution has failed to prove compliance with Section 55 of the NDPS Act, inasmuch as the seal was not deposited in the malkhana along with the seized articles, and no explanation has been offered for the same. It is urged that this omission seriously undermines the sanctity of the alleged seizure and opens a possibility of tampering, thereby vitiating the entire prosecution case. Learned counsel also submits that there is no proper entry in Ex.P/33C (Rojnamcha

Sanha register) regarding return of the sample sent for FSL, which creates a serious gap in the chain of custody and raises doubt whether the same sample was ever examined.

- 20.** It is further contended that the mandatory safeguards under Section 50 of the NDPS Act have also been violated. It is submitted that under Ex.P/7 (Consent Panchnama), the accused was merely given a formal option of search before a Gazetted Officer or Magistrate, and thereafter, he was searched by police officials after obtaining so-called consent. It is argued that this procedure is contrary to the settled law laid down by the Hon'ble Supreme Court, as Section 50 mandates strict compliance and informs the accused of an indefeasible right, and any dilution thereof renders the search illegal.
- 21.** Learned counsel further submits that the integrity of the seizure is further doubtful in view of contradictions in the prosecution evidence. PW-5 Kamlesh Singh has admitted in his deposition that he does not remember whether the alleged substances were weighed properly at the time of seizure. It is also submitted that discrepancies exist between Ex.P/15 (Weight Panchnama) and Ex.P/32 (Seized Goods Receipt), particularly regarding weight details, sealing procedure, and description of seized items, which have not been explained by the prosecution. It is further submitted that there is unexplained delay in sending samples to the FSL. As per the record, samples were dispatched on

13.05.2024 vide Ex.P/28, whereas the FSL report (Ex.P/49 and Ex.P/50) was received on 31.05.2025, and no satisfactory explanation has been furnished for such long delay. It is urged that such delay, in NDPS matters, creates serious doubt about the integrity of samples and possibility of tampering cannot be ruled out.

22. In support of his submissions, learned counsel has placed reliance upon the following judgments:

- *Simranjeet Singh v. State of Punjab, 2023 LiveLaw (SC) 570*
- *Yusuf v. State, 2023 LiveLaw (SC) 890*
- *Jugal Kishore v. State of Punjab, (2008) 17 SCC 747*
- *Ouseph v. State of Kerala, (2004) 10 SCC 647*
- *State of Rajasthan v. Bher Singh, (2009) 16 SCC 293*
- *Noor Aga v. State of Punjab & Another, (2008) 16 SCC 417*
- *State of Himachal Pradesh v. Surat Singh, Criminal Appeal No. 96 of 2018 (Supreme Court of India)*
- *Shailendra Patel & Another v. State of Chhattisgarh, Criminal Appeal No. 823 of 2023 (Chhattisgarh High Court)*
- *Chandrashekhar Shivhare & Another v. Intelligence Officer, Revenue, Criminal Appeal No. 808 of 2023 (Chhattisgarh High Court)*
- *Arun Kumar Jatav v. State of Chhattisgarh, Criminal Appeal No. 147 of 2022 (Chhattisgarh High Court)*
- *Bharat Aambale v. State of Chhattisgarh, Criminal Appeal No. 250 of 2025 (Chhattisgarh High Court)*

- *Surgally Srinivas v. State of Andhra Pradesh, Criminal Appeal No. 1474 of 2025 (Andhra Pradesh High Court)*

- 23.** Placing strong reliance upon the aforesaid judgments, learned counsel submits that strict compliance of Sections 52A, 55, and 50 of the NDPS Act is mandatory in nature, and any violation thereof goes to the root of the prosecution case. It is contended that in the present case, the prosecution has failed to establish compliance of these safeguards beyond reasonable doubt, and therefore, the conviction of the appellant is unsustainable in law.
- 24.** It is thus urged that the appellant has been falsely implicated, the investigation is defective and tainted, the chain of custody is broken, and the entire prosecution case is surrounded by serious doubts. Accordingly, it is prayed that the impugned judgment of conviction and sentence be set aside and the appellant be acquitted by extending the benefit of doubt.
- 25.** On the other hand, Mr. Shaleen Singh Baghel, learned Government Advocate appearing for the State, has vehemently opposed the submissions advanced on behalf of the appellant and has supported the impugned judgment of conviction and sentence passed by the learned Trial Court. It is submitted that the findings recorded by the Trial Court are based on proper appreciation of both oral and documentary evidence, which clearly establish the guilt of the appellant beyond reasonable doubt. It is contended that the prosecution has successfully proved the conscious possession of the appellant over the

contraband substance and the entire chain of events from receipt of information, raid, seizure, sealing, to forwarding of samples to the FSL stands duly established through reliable evidence.

- 26.** It is further submitted that the testimony of prosecution witnesses, particularly PW-1 Sanjay Nishad, PW-2 Sanjay Bohare, PW-3 Mukesh Kumar, PW-4 Chintamani Giri, PW-5 Kamlesh Singh, PW-6 Suraj Singh Chelak, PW-7 Dharmendra Kanauje, as well as PW-8 Investigating Officer Shrawan Kumar, consistently supports the prosecution case and inspires confidence. Learned State counsel submits that minor discrepancies, if any, in the depositions are natural and do not go to the root of the case so as to discredit the entire prosecution version. It is submitted that the recovery of contraband from the possession of the appellant stands duly proved by cogent and reliable evidence and the defence has failed to dislodge the same.
- 27.** It is further contended that there has been substantial compliance of the provisions of the NDPS Act, including Sections 50, 52, 52A and 55 of the Act. Learned State counsel submits that Section 50 of the NDPS Act is not applicable in the strict sense in the present case as the recovery was effected from a bag carried by the appellant and not from his personal body search alone. However, even otherwise, it is submitted that the appellant was duly informed of his legal rights and option of search before a Gazetted Officer or Magistrate was clearly communicated to him,

as evidenced from Exhibit Ex.P/6 and Ex.P/7, and his consent was voluntarily recorded in the presence of independent witnesses.

- 28.** With regard to compliance of Section 52A of the NDPS Act, it is submitted that proper inventory was prepared under Exhibit Ex.P/32 and the same was forwarded for judicial verification before the learned Magistrate. It is argued that there is substantial compliance of the statutory requirements and mere minor irregularities, if any, in documentation or procedural aspects do not vitiate the entire trial, particularly when the seizure and recovery have been otherwise duly proved. It is further submitted that the sampling procedure adopted by the investigating agency was proper, scientific, and in accordance with law. Learned State counsel submits that the samples were drawn in the presence of witnesses and sealed properly, and there is no credible evidence to suggest that the seal was tampered with at any stage. The FSL report Ex.P/49 and Ex.P/50 conclusively establishes that the seized substance contained psychotropic substances, thereby corroborating the prosecution case in its entirety.
- 29.** It is also contended that the alleged delay in dispatch of samples or examination by FSL does not, in any manner, affect the sanctity of the investigation, particularly when there is no evidence of tampering or substitution of samples. Learned

counsel submits that the chain of custody has been duly maintained through proper malkhana entries, forwarding memos, and official witnesses, and the defence has failed to demonstrate any prejudice caused due to alleged procedural lapses. It is further submitted that the entries in Rojnamcha Sanha and malkhana register, including Ex.P/33C to Ex.P/40C, clearly establish the movement and safe custody of seized articles. The testimony of PW-7 Dharmendra Kanauje (Malkhana Moharrir) supports the prosecution version regarding proper deposit and handling of seized property. It is argued that isolated discrepancies or overwriting, if any, are inconsequential and do not affect the credibility of the prosecution case.

- 30.** Learned State counsel further submits that the contention regarding non-deposit of seal or alleged violation of Section 55 of the NDPS Act is without substance, as the overall evidence demonstrates that proper sealing procedure was followed and custody was maintained under official supervision. It is argued that presumption under Section 35 and Section 54 of the NDPS Act operates against the appellant once possession is established, and the burden lies upon the accused to rebut the same, which has not been discharged in the present case. It is thus submitted that the learned Trial Court has rightly appreciated the evidence in its proper perspective and has recorded well-reasoned findings of guilt against the appellant. Learned State counsel contends that the appeal is devoid of merit, the

conviction is well founded in law and fact, and no interference is warranted by this Court in exercise of appellate jurisdiction. Accordingly, it is prayed that the appeal be dismissed and the conviction and sentence imposed upon the appellant be affirmed.

- 31.** We have heard learned counsel for the parties at considerable length and have also carefully perused the entire record of the case, including the impugned judgment, oral and documentary evidence adduced before the learned Trial Court, as well as the material placed on record in the present appeal.
- 32.** For proper adjudication of the present appeal, the following points arise for consideration before this Court:

(i) Whether the Investigating Officer, namely Sub-Inspector Shravan Kumar, Police Station Telibandha, District Raipur, was duly authorized and competent in law to conduct investigation under the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 and the rules framed thereunder?

(ii) Whether, on the date, time and place of occurrence, the appellant was found in conscious and unlawful possession of the contraband substance, namely Spasmo Proxyvon Plus capsules in a total quantity of 600 capsules weighing 300 grams, in contravention of the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 and the rules and notifications framed thereunder?

Finding on Point No. (i)

- 33.** So far as the first point for determination is concerned, namely whether the Investigating Officer, Sub-Inspector Shravan Kumar (PW-8), was a competent and duly authorized officer to conduct investigation under the provisions of the NDPS Act, this Court finds that the said issue has been appropriately considered and rightly decided by the learned Trial Court.
- 34.** At this stage, it would also be apposite to examine the applicability of the provisions contained under Section 43 of the Narcotic Drugs and Psychotropic Substances Act, 1985, which deals with the powers of seizure and arrest in a public place. Section 43 of the NDPS Act confers authority upon officers empowered under Section 42 of the Act to seize any narcotic drug, psychotropic substance or controlled substance in any public place or while the same is in transit, if the officer has reason to believe that an offence punishable under the Act has been committed. The said provision further authorises the officer to detain and search any person whom he has reason to believe to have committed such offence and, if such person is found to be in unlawful possession of any narcotic drug or psychotropic substance, to arrest him. The explanation appended to Section 43 clarifies that the expression “public place” includes any public conveyance, hotel, shop or any other place intended for use by, or accessible to, the public at large. Section 43 of the NDPS Act

provides the powers of seizure and arrest in public place which reads as under:

“43. Power of seizure and arrest in public place- Any officer of any of the departments mentioned in section 42 may:-

(a) seize in any public place or in transit, any narcotic drug or psychotropic substance or controlled substance in respect of which he has reason to believe an offence punishable under this Act has been committed, and, along with such drug or substance, any animal or conveyance or article liable to confiscation under this Act, any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act;

(b) detain and search any person whom he has reason to believe to have committed an offence punishable under this Act, and if such person has any narcotic drug or psychotropic substance or controlled substance in his possession and such possession appears to him to be unlawful, arrest him and any other person in his company.

Explanation- For the purposes of this section, the expression public place" includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to, the public.”

35. In the matter of ***Firdoskhan Khurshidkhan v. State of Gujarat and Another, 2024 SCC OnLine SC 680***, the Hon'ble Supreme Court while considering the issue regarding Section 42 of the NDPS Act, has held in paragraph 18, which reads as under :-

"18. Section 42 of the NDPS Act deals with search and seizure from a building, conveyance or enclosed place. When the search and seizure is effected from a public place, the provisions of Section 43 of the NDPS Act would apply and hence, there is no merit in the contention of learned counsel for the appellants that non-compliance of the requirement of Section 42(2) vitiates the search and seizure. Hence, the said contention is noted to be rejected."

36. Further, the Hon'ble Supreme Court in the matter of ***State of Haryana v. Jarnail Singh and Others, 2004 (5) SCC 188*** has held in paragraphs 9 and 10 of its judgment by observing as follows :-

"9. Sections 42 and 43, therefore, contemplate two different situations. Section 42 contemplates entry into and search of any building, conveyance or enclosed place, while Section 43 contemplates a seizure made in any public place or in transit. If seizure is made under Section 42 between sunset and sunrise, the requirement of the proviso thereto has to be complied with. There is no such proviso in Section 43 of the Act and, therefore, it is obvious that if a public conveyance is searched in a public place, the officer making the search is not required to record his satisfaction as contemplated by the proviso to Section 42 of the NDPS Act for searching the vehicle between sunset and the sunrise.

10. In the instant case there is no dispute that the tanker was moving on the public highway when it was stopped and searched. Section 43 therefore clearly applied to the facts of this case. Such being the factual position there was no requirement of the officer conducting the search to record the grounds of his belief as contemplated by the proviso to Section 42.

Moreover it cannot be lost sight of that the Superintendent of Police was also a member of the searching party. It has been held by this Court in M. Prabhulal vs. Assistant Director, Directorate of Revenue Intelligence : (2003) 8 SCC 449 that where a search is conducted by a gazetted officer himself acting under Section 41 of the NDPS Act, it was not necessary to comply with the requirement of Section 42. For this reason also, in the facts of this case, it was not necessary to comply with the requirement of the proviso to Section 42 of the NDPS Act."

37. In the matter of ***Kallu Khan vs. State of Rajasthan, 2021 (19)***

SCC 197, the Hon'ble Supreme Court has held as under :-

"12. After hearing and on perusal of record and the evidence brought, it is apparent that on apprehending the accused, while making search of the motor cycle, 900 gm of smack was seized to which seizure and sample memos were prepared, as proved by the departmental witnesses. In the facts of the case at hand, where the search and seizure was made from the vehicle used, by way of chance recovery from public road, the provisions of Section 43 of the NDPS Act would apply. In this regard, the guidance may be taken from the judgments of this Court in S. K. Raju (supra) and S.K. Sakkar (supra). However, the recovery made by Pranveer Singh (PW6) cannot be doubted in the facts of this case.

13. Now reverting to the contention that the motor cycle seized in commission of offence does not belong to accused, however seizure of the contraband from the motor cycle cannot be connected to prove the guilt of accused. The Trial Court on appraisal of the testimony of witnesses, Constable Preetam Singh (PW1), Constable Sardar Singh (PW2), S.I. Pranveer Singh (PW6) and Constable Rajendra Prasad

(PW8), who were members of the patrolling team and the witnesses of the seizure, proved beyond reasonable doubt, when they were on patrolling, the appellant came driving the seized vehicle from opposite side. On seeing the police vehicle, he had taken back the motor cycle which he was riding. However, the police team apprehended and intercepted the accused and made the search of vehicle, in which the seized contraband smack was found beneath the seat of the vehicle. However, while making search at public place, the contraband was seized from the motor cycle driven by the accused. Thus, recovery of the contraband from the motor cycle of the appellant was a chance recovery on a public road. As per Section 43 of NDPS Act, any officer of any of the departments, specified in Section 42, is having power of seizure and arrest of the accused from a public place, or in transit of any narcotic drug or psychotropic substance or controlled substance. The said officer may detain in search any person whom he has reason to believe that he has committed an offence punishable under the provisions of the NDPS Act, in case the possession of the narcotic drug or psychotropic substance appears to be unlawful. Learned senior counsel representing the appellant is unable to show any deficiency in following the procedure or perversity to the findings recorded by the Trial Court, affirmed by the High Court. The seizure of the motor cycle from him is proved beyond reasonable doubt, therefore, the question of ownership of vehicle is not relevant. In the similar set of facts, in the case of Rizwan Khan (supra), this Court observed the ownership of the vehicle is immaterial. Therefore, the argument as advanced by learned senior counsel is of no substance and meritless."

38. Reverting to the facts of the present case in the light of
aforementioned rulings of the Hon'ble Apex Court, it is quite vivid

that the search and seizure were effected at a place which was accessible to the public and therefore squarely falls within the ambit of a "public place" as contemplated under Section 43 of the NDPS Act. It is an admitted position emerging from the record that PW-8 Shравan Kumar was posted as Sub-Inspector at Police Station Telibandha, District Raipur at the relevant point of time. The fact of his posting and rank has not been disputed by the defence during trial. No suggestion or evidence has been led on behalf of the appellant to show that the said officer was not competent to undertake investigation or that he was lacking jurisdiction under the NDPS Act.

- 39.** The prosecution has placed on record the relevant notifications issued by the State Government, namely Notification F. No. B-6-35-V-SR-85-4801 dated 11.11.1985 issued under Section 41(2) of the NDPS Act and Notification F. No. B-6-35-V-SR-85-4804 dated 11.11.1985 issued under Section 42(1) of the NDPS Act. By virtue of the said statutory notifications, officers of the Police Department including Sub-Inspectors have been duly empowered and authorized to exercise powers under Sections 41 and 42 of the NDPS Act within their respective territorial jurisdiction.
- 40.** A bare perusal of the said notifications, which are part of the record, clearly demonstrates that the State Government has specifically authorized Sub-Inspectors of Police to exercise powers under the NDPS Act for taking cognizance, conducting

search, seizure and investigation in respect of offences committed within their jurisdiction. The said notifications have been duly proved and exhibited during trial as part of documentary evidence, which includes Ex.P/30 and allied official correspondence relating to authorization and departmental competence.

- 41.** Further, the oral testimony of PW-8 Shravan Kumar categorically establishes that he was the Investigating Officer who received the secret information, recorded the same in the Rojnamcha Sanha, proceeded to the spot, conducted the search and seizure, prepared the seizure memos, arrest memo, panchnamas, and thereafter completed the investigation culminating into submission of charge-sheet. His deposition remains consistent, cogent and unshaken in cross-examination.

- 42.** The testimony of PW-5 Kamlesh Singh (Ex.P/24 and Ex.P/29A), PW-4 Chintamani Giri (Ex.P/08, Ex.P/10, Ex.P/11), PW-3 Mukesh Kumar (Ex.P/05, Ex.P/06, Ex.P/07), PW-2 Sanjay Bohare (Ex.P/23) and PW-1 Sanjay Nishad (Ex.P/22) also supports the fact that the entire search and seizure proceedings were conducted by the police team led by PW-8 Shravan Kumar in accordance with law. The documentary exhibits such as Ex.P/01 (Section 160 Cr.P.C. notices), Ex.P/03 (informant information panchnama), Ex.P/06 (notice under Section 50 NDPS Act), Ex.P/08 (search panchnama), Ex.P/13 (recovery panchnama),

Ex.P/16 (seizure memo and sealing panchnama), Ex.P/19 (reasons of arrest), and Ex.P/31 (report under Section 57 NDPS Act) further corroborate the role and authority of PW-8 as Investigating Officer. It is also evident from Ex.P/45 (FIR) and Ex.P/21 (crime details form) that the entire criminal process was initiated and investigated by PW-8 in his official capacity as Sub-Inspector, and at no point of time was any objection raised either during trial or in cross-examination regarding his competence.

- 43.** The State Government notifications, read with the statutory scheme of Sections 41 and 42 of the NDPS Act, clearly empower officers of the rank of Sub-Inspector to act as empowered officers within their territorial jurisdiction. In the present case, PW-8 Shравan Kumar was admittedly acting within his jurisdiction at Police Station Telibandha, Raipur, where the alleged offence occurred at Kashiram Nagar, Telibandha overbridge area.
- 44.** The testimony of PW-8, the Investigating Officer, as well as the members of the raiding party including PW-1, PW-2, PW-3 and PW-4, reveals that on the basis of prior information received by the police, a raiding party was constituted and the appellant was intercepted at a relevant place within the jurisdiction of Police Station Telibandha, District Raipur (C.G.). At the time of interception, the appellant was found in possession of a plastic bag containing strips of Spasmo Proxyvon Plus capsules. Upon search of the said bag carried by the appellant, 25 strips

containing in all 600 capsules of Spasmo Proxyvon Plus, weighing about 300 grams, were recovered from his conscious possession.

- 45.** It is further evident from the prosecution evidence that the raid was not an incidental or routine checking in a public place, but was conducted pursuant to prior specific information regarding illegal possession and transportation of narcotic/psychotropic substances. The seizure was effected at the spot immediately after interception of the appellant, and the contraband articles were recovered from the bag carried by him while he was in movement. The entire recovery proceedings are duly recorded in seizure memo Ex.P/08 and Ex.P/13, which stand proved by PW-8 and corroborated by PW-1, PW-3 and PW-4.
- 46.** In such factual circumstances, the principal issue which arises is whether the search and seizure conducted by the police authorities would fall within the ambit of Section 42 or Section 43 of the Narcotic Drugs and Psychotropic Substances Act, 1985. Section 42 of the Act contemplates search and seizure based on prior information in respect of a building, conveyance or enclosed place, whereas Section 43 deals with seizure and arrest in public places or in transit without warrant or authorization.
- 47.** It is well settled that where the recovery of contraband is effected from the possession of an individual who is intercepted while carrying the contraband on a road or open place, and the seizure

is made on the spot during movement, the provisions of Section 43 of the NDPS Act are attracted. In such cases, the rigours of Section 42 relating to prior recording of information and communication to superior officers are not mandatory in the same manner as applicable to searches of enclosed premises.

- 48.** The distinction between Sections 42 and 43 of the NDPS Act has been consistently recognised by judicial pronouncements. Section 42 applies primarily to cases where prior secret information is acted upon for conducting search of buildings or enclosed places, whereas Section 43 governs situations where contraband is recovered from a person in a public place or while in transit. The legislative intent behind this distinction is to enable swift action by enforcement agencies in cases of mobile possession and transportation of narcotic substances, where delay may defeat the object of the Act.
- 49.** Applying the aforesaid legal principles to the facts of the present case, this Court finds that the appellant was intercepted by the police party during the course of action taken on credible information, and the contraband capsules were recovered from the bag in his possession at the spot itself. The evidence of PW-8 Investigating Officer, duly supported by PW-1 to PW-4, clearly establishes that the recovery was effected contemporaneously upon interception of the appellant, and not from any enclosed premises or private building.

- 50.** In view of the above factual and legal position, this Court is of the considered opinion that the search and seizure conducted in the present case squarely falls within the ambit of Section 43 of the NDPS Act. Consequently, the requirement of strict compliance of Section 42 of the Act, as contended on behalf of the appellant, does not arise for consideration. The submission regarding alleged non-compliance of Section 42 is, therefore, rejected being devoid of merit, and the search and seizure proceedings are held to be valid and in accordance with law.
- 51.** Upon careful reappraisal of the entire oral and documentary evidence on record, this Court finds that the conclusion arrived at by the learned Trial Court on Point No. (i) suffers from no infirmity, illegality or perversity warranting interference in the present appeal. The learned Trial Court has, on the basis of cogent and reliable material, rightly held that PW-8 Sub-Inspector Shravan Kumar, who conducted the investigation in Crime No. 172/2024 registered at Police Station Telibandha, District Raipur (C.G.), was duly empowered and legally competent to undertake investigation under the provisions of the NDPS Act. The said finding is founded upon due consideration of the relevant statutory notifications issued by the State Government as well as the factual position obtaining in the case.
- 52.** The prosecution has relied upon Notification F. No. B-6-35-V-SR-85-4801 dated 11.11.1985 issued under Section 41(2) of the

NDPS Act and Notification F. No. B-6-35-V-SR-85-4804 dated 11.11.1985 issued under Section 42(1) of the NDPS Act, whereby officers of the Police Department including Inspectors, Sub-Inspectors, Assistant Sub-Inspectors and other designated ranks were duly authorised to exercise powers of entry, search, seizure and investigation within their respective territorial jurisdictions.

- 53.** It is not in dispute that PW-8 Shraavan Kumar was, at the relevant point of time, posted as Sub-Inspector at Police Station Telibandha and was functioning well within the territorial jurisdiction of the said police station. His authority to investigate offences under the NDPS Act flows directly from the aforesaid statutory notifications, which specifically include Sub-Inspectors of Police within the category of empowered officers for the purpose of enforcement of the Act. The evidence of PW-8, read in conjunction with Ex.P/01 to Ex.P/08 and other connected documents, clearly demonstrates that he was the officer who received the information, constituted the raiding team, conducted the search and seizure, prepared the seizure memo Ex.P/08, and carried out the investigation in accordance with law. His testimony has remained consistent, natural and unshaken in cross-examination, and nothing has been elicited to create any doubt regarding his competence or authority.
- 54.** Furthermore, no material has been brought on record by the defence to demonstrate that PW-8 lacked jurisdiction or that any

statutory bar existed on him from investigating the present offence.

55. The plea of incompetence raised on behalf of the appellant is thus purely speculative and is not supported by any legal or factual foundation. In view of the statutory notifications issued by the State Government, the settled position of law, and the unimpeached testimony of PW-8 supported by contemporaneous documentary evidence, this Court is of the considered view that the Investigating Officer was duly authorised and competent in law to conduct the investigation in the present case.

56. Consequently, the finding recorded by the learned Trial Court on Point No. (i) is based on proper appreciation of evidence, correct application of legal principles, and does not suffer from any error apparent on the face of the record. The same calls for no interference by this Court in appellate jurisdiction.

57. Accordingly, Point No. (i) is answered in the affirmative.

Finding on Point No. (ii)

58. So far as Point No. (ii) is concerned, the core question for consideration before this Court is whether, on the date, time and place of occurrence, the appellant was found in conscious and unlawful possession of 600 capsules of Spasmo Proxyvon Plus (containing Dicyclomine, Tramadol & Acetaminophen), weighing 300 grams, in contravention of the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985.

- 59.** The next submission advanced on behalf of the appellant relates to alleged non-compliance of Section 50 of the NDPS Act. It has been contended that the mandatory safeguard under Section 50 was not adhered to by the raiding party and that the appellant was not apprised of his alleged right to be searched before a Gazetted Officer or a Magistrate, thereby vitiating the entire search and seizure proceedings. It has further been argued that the search being illegal, the conviction cannot be sustained.
- 60.** This Court finds no substance in the aforesaid submission. A bare perusal of the evidence of PW-8 Investigating Officer Shraavan Kumar, duly corroborated by PW-1 to PW-4 and supported by seizure memo Ex.P/08 and Ex.P/13, clearly establishes that the contraband substance, namely 600 capsules of Spasmo Proxyvon Plus, was recovered from a plastic bag carried by the appellant and not from his physical body. The search conducted by the police party was confined only to the bag in possession of the appellant at the time of interception. It is thus evident that the recovery in the present case does not constitute a “personal search” within the meaning of Section 50 of the NDPS Act.
- 61.** It is well settled that the mandate of Section 50 of the NDPS Act is attracted only when the search of the person of the accused is undertaken. Where the contraband is recovered from baggage, containers, or articles carried by the accused, the requirement of informing the accused of his right under Section 50 is not

applicable. In the present case, since the recovery has been effected from a bag carried by the appellant, the contention regarding non-compliance of Section 50 is clearly misconceived and liable to be rejected. The Court further notes that the procedure prescribed under Section 52A of the NDPS Act has been substantially complied with in the present case. The seizure, preparation of inventory and sampling of the contraband was conducted under judicial supervision as reflected from Ex.P/32, Ex.P/47 and Ex.P/47A. PW-7 Dharmendra Kanauje (Malkhana Moharrir) has clearly stated that the seized articles were received in sealed condition and were duly entered in the malkhana register, ensuring the integrity of the chain of custody. The samples were drawn in accordance with law and forwarded to the Forensic Science Laboratory through proper channel as per Ex.P/49 and Ex.P/50. The FSL report Ex.P/50 confirms that the seized substance contained psychotropic substances covered under the NDPS Act. The chain of custody having remained intact and the sampling having been conducted under judicial supervision, the safeguards under Section 52A stand duly complied with. In view of the above, the plea of the appellant regarding violation of Section 50 and Section 52A of the NDPS Act is wholly untenable and does not vitiate the prosecution case in any manner.

- 62.** The legal position in this regard has been authoritatively settled by the Supreme Court. In *Madan Lal v. State of Himachal*

Pradesh, (2003) 7 SCC 465, the Supreme Court has explained the concept of possession under the NDPS Act and has held that once possession of a contraband article is established, the burden shifts upon the accused to explain that such possession was not conscious and held as under :-

“16. A bare reading of Section 50 shows that it only applies in case of personal search of a person. It does not extend to search of a vehicle or a container or a bag, or premises. (See Kalema Tumba v. State of Maharashtra and Anr. (JT 1999 (8) SC 293), The State of Punjab v. Baldev Singh (JT 1999 (4) SC 595), Gurbax Singh v. State of Haryana (2001(3) SCC 28). The language of Section 50 is implicitly clear that the search has to be in relation to a person as contrasted to search of premises, vehicles or articles. This position was settled beyond doubt by the Constitution Bench in Baldev Singh's case (supra). Above being the position, the contention regarding non-compliance of Section 50 of the Act is also without any substance.

21. It is highlighted that unless the possession was coupled with requisite mental element, i.e. conscious possession and not mere custody without awareness of the nature of such possession, Section 20 is not attracted.

22. The expression 'possession' is a polymorphous term which assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in Superintendent & Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja and Ors. (AIR 1980 SC 52), to work out a completely logical and precise definition of "possession" uniformly applicable to all situations in the context of all statutes.

23. *The word 'conscious' means awareness about a particular fact. It is a state of mind which is deliberate or intended.*

24. *As noted in Gunwantlal v. The State of M.P. (AIR 1972 SC 1756) possession in a given case need not be physical possession but can be constructive, having power and control over the article in case in question, while the person whom physical possession is given holds it subject to that power or control.*

25. *The word 'possession' means the legal right to possession (See Health v. Drown (1972) (2) All ER 561 (HL). In an interesting case it was observed that where a person keeps his fire arm in his mother's flat which is safer than his own home, he must be considered to be in possession of the same. (See Sullivan v. Earl of Caithness (1976 (1) All ER 844 (QBD).*

26. *Once possession is established the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of presumption available in law. Similar is the position in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles”*

63. Similarly, in **State of Himachal Pradesh v. Pawan Kumar, (2005) 4 SCC 350**, it has been held that the search of a bag, briefcase or container carried by the accused cannot be treated as a personal search and therefore the provisions of Section 50 would not apply in such a situation and observed as under :-

“11. A bag, briefcase or any such article or container, etc. can, under no circumstances, be treated as body of a human being. They are given a separate name and are identifiable as such. They cannot even remotely be treated to

be part of the body of a human being. Depending upon the physical capacity of a person, he may carry any number of items like a bag, a briefcase, a suitcase, a tin box, a thaila, a jhola, a gathri, a holdall, a carton, etc. of varying size, dimension or weight. However, while carrying or moving along with them, some extra effort or energy would be required. They would have to be carried either by the hand or hung on the shoulder or back or placed on the head. In common parlance it would be said that a person is carrying a particular article, specifying the manner in which it was carried like hand, shoulder, back or head, etc. Therefore, it is not possible to include these articles within the ambit of the word "person" occurring in Section 50 of the Act.

12. An incriminating article can be kept concealed in the body or clothings or coverings in different manner or in the footwear. While making a search of such type of articles, which have been kept so concealed, it will certainly come within the ambit of the word "search of person". One of the tests, which can be applied is, where in the process of search the human body comes into contact or shall have to be touched by the person carrying out the search, it will be search of a person. Some indication of this is provided by Sub-section (4) of Section 50 of the Act, which provides that no female shall be searched by anyone excepting a female. The legislature has consciously made this provision as while conducting search of a female, her body may come in contact or may need to be touched and, therefore, it should be done only by a female. In the case of a bag, briefcase or any such article or container, etc., they would not normally move along with the body of the human being unless some extra or special effort is made. Either they have to be carried in hand or hung on the shoulder or back or placed on the head. They can be easily and in no time placed away from the body of the

carrier. In order to make a search of such type of objects, the body of the carrier will not come in contact of the person conducting the search. Such objects cannot be said to be inextricably connected with the person, namely, the body of the human being. Inextricable means incapable of being disentangled or untied or forming a maze or tangle from which it is impossible to get free.

13. The scope and ambit of Section 50 of the Act was examined in considerable detail by a Constitution Bench in State of Punjab v. Baldev Singh 1999 (6) SCC 172 and para 12 of the reports is being reproduced below :

"12. On its plain reading, Section 50 would come into play only in the case of a search of a person as distinguished from search of any premises etc. However, if the empowered officer, without any prior information as contemplated by Section 42 of the Act makes a search or causes arrest of a person during the normal course of investigation into an offence or suspected offence and on completion of that search, a contraband under the NDPS Act is also recovered, the requirements of Section 50 of the Act are not attracted."

The Bench recorded its conclusion in para 57 of the reports and sub- paras (1), (2), (3) and (6) are being reproduced below :

"57. On the basis of the reasoning and discussion above, the following conclusions arise: (1) That when an empowered officer or a duly authorized officer acting on prior information is about to search a person, it is imperative for him to inform the person concerned of his right under sub-section (1) of Section 50 of being taken to the nearest gazetted officer or the nearest Magistrate for making the search. However, such information may not necessarily be in writing. (2) That failure to inform the person concerned about the existence of his right to

be searched before a gazetted officer or a Magistrate would cause prejudice to an accused.

(3) That a search made by an empowered officer, on prior information, without informing the person of his right that if he so requires, he shall be taken before a gazetted officer or a Magistrate for search and in case he so opts, failure to conduct his search before a gazetted officer or a Magistrate may not vitiate the trial but would render the recovery of the illicit article suspect and vitiate the conviction and sentence of an accused, where the conviction has been recorded only on the basis of the possession of the illicit article, recovered from his person, during a search conducted in violation of the provisions of Section 50 of the Act.

(6) That in the context in which the protection has been incorporated in Section 50 for the benefit of the person intended to be searched, we do not express any opinion whether the provisions of Section 50 are mandatory or directory, but hold that failure to inform the person concerned of his right as emanating from sub-section (1) of Section 50, may render the recovery of the contraband suspect and the conviction and sentence of an accused bad and unsustainable in law."

14. The above quoted dictum of the Constitution Bench shows that the provisions of Section 50 will come into play only in the case of personal search of the accused and not of some baggage like a bag, article or container, etc. which he may be carrying."

64. The same principle has been reiterated in ***Ajmer Singh v. State of Haryana, (2010) 3 SCC 746***, wherein the Supreme Court held that recovery of contraband from a bag carried by the accused does not amount to personal search of the accused. The

Supreme Court has again reiterated the said principle in ***Arif Khan @ Agha Khan v. State of Uttarakhand, (2018) 18 SCC 380*** and ***Baljinder Singh v. State of Punjab, (2019) 10 SCC 473***, holding that the requirement of informing the accused of his right under Section 50 arises only in cases of personal body search and not when the recovery is made from a bag, container or other article carried by the accused. In such circumstances, the search is treated as search of an article and not of the person of the accused. The Supreme Court has held as follows :-

"13. The law is thus well settled that an illicit Article seized from the person during personal search conducted in violation of the safeguards provided in Section 50 of the Act cannot by itself be used as admissible evidence of proof of unlawful possession of contra-band. But the question is, if there be any other material or Article recovered during the investigation, would the infraction with respect to personal search also affect the qualitative value of the other material circumstance ?

*14. At this stage we may also consider following observations from the decision of this Court in *Ajmer Singh v. State of Haryana [(2010) 3 SCC 746]*:*

"15. The learned Counsel for the Appellant contended that the provision of Section 50 of the Act would also apply, while searching the bag, briefcase, etc. carried by the person and its non-compliance would be fatal to the proceedings initiated under the Act. We find no merit in the contention of the learned Counsel. It requires to be noticed that the question of compliance or non-compliance with Section 50 of the NDPS Act is relevant only where search of a person is involved and the said Section is not applicable nor

attracted where no search of a person is involved. Search and recovery from a bag, briefcase, container, etc. does not come within the ambit of Section 50 of the NDPS Act, because firstly, Section 50 expressly speaks of search of person only. Secondly, the Section speaks of taking of the person to be searched by the gazetted officer or a Magistrate for the purpose of search. Thirdly, this issue in our considered opinion is no more res Integra in view of the observations made by this Court in Madan Lal v. State of H.P. [(2003) 7 SCC 465]. The Court has observed: (SCC p. 471, para 16)

16. A bare reading of Section 50 shows that it only applies in case of personal search of a person. It does not extend to search of a vehicle or a container or a bag or premises (see Kalema Tumba v. State of Maharashtra [(1999) 8 SCC 257], State of Punjab v. Baldev Singh-[(1999) 6 SCC 172] and Gurbax Singh v. State of Haryana [(2001) 3 SCC 28]). The language of Section 50 is implicitly clear that the search has to be in relation to a person as contrasted to search of premises, vehicles or articles. This position was settled beyond doubt by the Constitution Bench in Baldev Singh case (1999) 6 SCC 172 Above being the position, the contention regarding non-compliance with Section 50 of the Act is also without any substance."

15. As regards applicability of the requirements Under Section 50 of the Act are concerned, it is well settled that the mandate of Section 50 of the Act is confined to "personal search" and not to search of a vehicle or a container or premises.

16. The conclusion (3) as recorded by the Constitution Bench in Para 57 of its judgment in Baldev Singh clearly states that the conviction may not be based "only" on the basis of possession of an illicit Article recovered from

personal search in violation of the requirements Under Section 50 of the Act but if there be other evidence on record, such material can certainly be looked into.”

- 65.** Reverting to the facts of the present case in the light of the aforesaid settled legal principles laid down by the Hon'ble Supreme Court in aforementioned case laws, it is quite vivid that the contention raised on behalf of the appellant regarding non-compliance of Section 50 of the NDPS Act is wholly untenable and devoid of merit. The evidence of PW-8 Investigating Officer Shравan Kumar, duly corroborated by PW-1 to PW-4 and supported by documentary exhibits Ex.P/08 (search and seizure memo), Ex.P/13 (seizure panchnama) and Ex.P/16 (sealing memo), clearly establishes that the recovery of 600 capsules of Spasmo Proxyvon Plus was effected from a plastic bag carried by the appellant at the time of interception and not from his physical person. The search, therefore, was confined to a bag in possession of the appellant and did not involve any bodily or personal search so as to attract the mandatory safeguards under Section 50 of the NDPS Act. In view of the consistent legal position that Section 50 is applicable only in cases of personal search of the body of the accused and not to search of bags, containers or articles carried by him, the present case squarely falls outside the ambit of Section 50. Consequently, non-compliance of Section 50, as alleged, does not arise and cannot be a ground to vitiate the conviction.

66. Now, this Court deems it appropriate to deal with the compliance of Section 52-A of the NDPS Act, which has been one of the focal points of challenge raised on behalf of the appellant. Section 52-A of the NDPS Act provides a statutory mechanism relating to the disposal, inventory preparation, and certification of seized narcotic drugs and psychotropic substances. The provision mandates that, as soon as may be, the officer-in-charge of the police station or the investigating officer shall prepare an inventory of the seized articles, draw representative samples in the presence of a Magistrate, and obtain certification of the correctness of such inventory, photographs, and samples so drawn. The object behind incorporation of Section 52-A is twofold: firstly, to ensure the sanctity and integrity of the seized contraband so that the possibility of tampering is eliminated; and secondly, to facilitate expeditious disposal of seized narcotic substances without awaiting the conclusion of trial, while at the same time preserving evidentiary value.
67. The Hon'ble Supreme Court in ***Union of India v. Mohanlal, (2016) 3 SCC 379*** has categorically held that compliance of Section 52-A is a procedural safeguard intended to ensure fair investigation and preservation of seized articles, and non-compliance thereof does not ipso facto vitiate the trial unless prejudice is demonstrated or the seizure itself is rendered doubtful.

68. Similarly, in ***Khet Singh v. Union of India, (2002) 4 SCC 380*** and ***Noor Aga v. State of Punjab, (2008) 16 SCC 417***, it has been observed that the evidentiary value of the seizure is primarily dependent upon the credibility of the seizure witnesses, the seizure memo, and the chemical examination report, rather than strict procedural adherence to Section 52-A in a mechanical manner.
69. In the matter of ***Bharat Aambale vs. The State of Chhattisgarh in CRA No. 250 of 2025, order dated 06.01.2025***, the Hon'ble Supreme Court has held that irrespective of any failure to follow the procedure laid under Section 52-A of the NDPS Act if the other material on record adduced by the prosecution inspires confidence and satisfies the Court regarding both recovery and possession of the contraband from the accused, then even in such cases the Courts can without hesitation proceed for conviction notwithstanding any procedural difficulty in terms of Section 52-A of the NDPS Act.
70. In the matter of ***Bharat Aambale*** (supra) the Hon'ble Supreme Court in Para 25 to 37 has held as under:

“25. In Noor Aga v. State of Punjab & Anr. (2008) 16 SCC 417, the order of conviction had been set-aside not just on the ground of violation of Section 52A but due to several other discrepancies in the physical evidence as to the colour and weight, and due to the lack of any independent witnesses. In fact, this Court despite being conscious of the procedural

deficiencies in the said case in terms of Section 52A observed that the matter may have been entirely different if there were no other discrepancies or if the other material on record were found to be convincing or supported by independent witnesses. The relevant observations read as under: -

“107. The seal was not even deposited in the malkhana. As no explanation whatsoever has been offered in this behalf, it is difficult to hold that sanctity of the recovery was ensured. Even the malkhana register was not produced.

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108. There exist discrepancies also in regard to the time of recovery. The recovery memo, Exhibit PB, shows that the time of seizure was 11.20 p.m. PW 1 Kulwant Singh and PW 2 K.K. Gupta, however, stated that the time of seizure was 8.30 p.m. The appellant's defence was that some carton left by some passenger was passed upon him, being a crew member in this regard assumes importance (see Jitendra para 6). The panchnama was said to have been drawn at 10 p.m. as per PW 1 whereas PW 2 stated that panchnama was drawn at 8.30 p.m. Exhibit PA, containing the purported option to conduct personal search under Section 50 of the Act, only mentioned the time when the flight landed at the airport.

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111. In a case of this nature, where there are a large number of discrepancies, the appellant has been gravely prejudiced by their non-examination. It is true that what matters is the quality of the evidence and not the quantity thereof but in a case of this nature where procedural safeguards were required to be strictly complied with, it is for the prosecution to explain why the material witnesses had not been examined. The matter might have been different if the evidence of the investigating officer who recovered the material objects was found to be convincing. The statement of the

investigating officer is wholly unsubstantiated. There is nothing on record to show that the said witnesses had turned hostile. Examination of the independent witnesses was all the more necessary inasmuch as there exist a large number of discrepancies in the statement of official witnesses in regard to search and seizure of which we may now take note.”

(Emphasis supplied)

26. Non-compliance or delayed compliance with the procedure prescribed under Section 52A of the NDPS Act or the Rules / Standing Order(s) thereunder may lead the court to draw an adverse inference against the prosecution. However, no hard and fast rule can be laid down as to when such inference may be drawn, and it would all depend on the peculiar facts and circumstances of each case. Such delay or deviation from Section 52A of the NDPS Act or the Standing Order(s)/Rules thereunder will not, by itself, be fatal to the case of the prosecution, unless there are discrepancies in the physical evidence which may not have been there had such compliance been done. What is required is that the courts take a holistic and cumulative view of the discrepancies that exist in the physical evidence adduced by the prosecution and correlate or link the same with any procedural lapses or deviations. Thus, whenever, there is any deviation or non-compliance of the procedure envisaged under Section 52A, the courts are required to appreciate the same keeping in mind the discrepancies that exist in the prosecution's case. In such instances of procedural error or deficiency, the courts ought to be extra-careful and must not overlook or brush aside the discrepancies lightly and rather should scrutinize the material on record even more stringently to satisfy itself of the aspects of possession, seizure or recovery of such material in the first place.

27. In such circumstances, particularly where

there has been lapse on the part of the police in either following the procedure laid down in Section 52A of the NDPS Act or the prosecution in adequately proving compliance of the same, it would not be appropriate for the courts to resort to the statutory presumption of commission of an offence from the possession of illicit material under Section 54 of the NDPS Act, unless the court is otherwise satisfied as regards the seizure or recovery of such material from the accused persons from the other material on record. Similarly, irrespective of any failure to follow the procedure laid under Section 52A of the NDPS Act, if the other material on record adduced by the prosecution inspires confidence and satisfies the court regarding both the recovery and possession of the contraband from the accused, then even in such cases, the courts can without hesitation proceed for conviction notwithstanding any procedural defect in terms of Section 52A of the NDPS Act.

28. In Khet Singh v. Union of India reported in (2002) 4 SCC 380 this Court held that the Standing Order(s) issued by the NCB and the procedure envisaged therein is only intended to guide the officers and to see that a fair procedure is adopted by the officer-in-charge of the investigation. It further observed that there may, however, be circumstances in which it would not be possible to follow these guidelines to the letter, particularly in cases of chance recovery or lack of proper facility being available at the spot. In such circumstances of procedural illegality, the evidence collected thereby will not become inadmissible and rather the courts would only be required to consider all the circumstances and find out whether any serious prejudice had been caused to the accused or not. Further it directed, that in such cases of procedural lapses or delays, the officer would be duty bound to indicate and explain the reason

behind such delay or deficiency whilst preparing the memo. The relevant observations read as under: -

“5. It is true that the search and seizure of contraband article is a serious aspect in the matter of investigation related to offences under the NDPS Act. The NDPS Act and the Rules framed thereunder have laid down a detailed procedure and guidelines as to the manner in which search and seizure are to be effected. If there is any violation of these guidelines, the courts would take a serious view and the benefit would be extended to the accused. The offences under the NDPS Act are grave in nature and minimum punishment prescribed under the statute is incarceration for a long period. As the possession of any narcotic drug or psychotropic substance by itself is made punishable under the Act, the seizure of the article from the appellant is of vital importance.

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10. The instructions issued by the Narcotics Control Bureau, New Delhi are to be followed by the officer-in-charge of the investigation of the crimes coming within the purview of the NDPS Act, even though these instructions do not have the force of law. They are intended to guide the officers and to see that a fair procedure is adopted by the officer-in-charge of the investigation. It is true that when a contraband article is seized during investigation or search, a seizure mahazar should be prepared at the spot in accordance with law. There may, however, be circumstances in which it would not have been possible for the officer to prepare the mahazar at the spot, as it may be a chance recovery and the officer may not have the facility to prepare a seizure mahazar at the spot itself. If the seizure is effected at the place where there are no witnesses and there is no facility for weighing the contraband article or other requisite

facilities are lacking, the officer can prepare the seizure mahazar at a later stage as and when the facilities are available, provided there are justifiable and reasonable grounds to do so. In that event, where the seizure mahazar is prepared at a later stage, the officer should indicate his reasons as to why he had not prepared the mahazar at the spot of recovery. If there is any inordinate delay in preparing the seizure mahazar, that may give an opportunity to tamper with the contraband article allegedly seized from the accused. There may also be allegations that the article seized was by itself substituted and some other items were planted to falsely implicate the accused. To avoid these suspicious circumstances and to have a fair procedure in respect of search and seizure, it is always desirable to prepare the seizure mahazar at the spot itself from where the contraband articles were taken into custody.

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16. Law on the point is very clear that even if there is any sort of procedural illegality in conducting the search and seizure, the evidence collected thereby will not become inadmissible and the court would consider all the circumstances and find out whether any serious prejudice had been caused to the accused. If the search and seizure was in complete defiance of the law and procedure and there was any possibility of the evidence collected likely to have been tampered with or interpolated during the course of such search or seizure, then, it could be said that the evidence is not liable to be admissible in evidence.”

(Emphasis supplied)

29. A similar view as above was reiterated in the decision of *State of Punjab v. Makhan Chand* reported in (2004) 3 SCC 453 wherein this Court after examining the purport of Section 52A of the NDPS Act and the Standing Order(s) issued thereunder, held that the

procedure prescribed under the said order is merely intended to guide the officers to see that a fair procedure is adopted by the officer in charge of the investigation and they were not inexorable rules. The relevant observations read as under: -

“10. This contention too has no substance for two reasons. Firstly, Section 52-A, as the marginal note indicates, deals with “disposal of seized narcotic drugs and psychotropic substances”. Under sub-section (1), the Central Government, by a notification in the Official Gazette, is empowered to specify certain narcotic drugs or psychotropic substances, having regard to the hazardous nature, vulnerability to theft, substitution, constraints of proper storage space and such other relevant considerations, so that even if they are material objects seized in a criminal case, they could be disposed of after following the procedure prescribed in sub-sections (2) and (3). If the procedure prescribed in sub-sections (2) and (3) of Section 52-A is complied with and upon an application, the Magistrate issues the certificate contemplated by sub-section (2), then sub-section (4) provides that, notwithstanding anything to the contrary contained in the Indian Evidence Act, 1872 or the Code of Criminal Procedure, 1973, such inventory, photographs of narcotic drugs or substances and any list of samples drawn under sub-section (2) of Section 52-A as certified by the Magistrate, would be treated as primary evidence in respect of the offence. Therefore, Section 52-A(1) does not empower the Central Government to lay down the procedure for search of an accused, but only deals with the disposal of seized narcotic drugs and psychotropic substances.

11. Secondly, when the very same Standing Orders came up for consideration in Khet Singh v. Union of India this Court took the view that they are merely intended to guide the officers

to see that a fair procedure is adopted by the officer in charge of the investigation. It was also held that they were not inexorable rules as there could be circumstances in which it may not be possible for the seizing officer to prepare the mahazar at the spot, if it is a chance recovery, where the officer may not have the facility to prepare the seizure mahazar at the spot itself. Hence, we do not find any substance in this contention.”

(Emphasis supplied)

30. Thus, from above it is clear that 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 ensure 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. We say so because, due to varying circumstances, there may be situations wherein it may not always be possible to forward the seized contraband immediately for the purpose of sampling. This could be due to various factors, such as the sheer volume of the contraband, the peculiar nature of the place of seizure, or owing to the volatility of the substance so seized that may warrant slow and safe handling. There could be situations where such contraband after being sampled cannot be preserved due to its hazardous nature and must be destroyed forthwith or vice-verse where the nature of the case demands that they are preserved and remain untouched. Due to such multitude of possibilities or situations, neither can the police be realistically expected to rigidly adhere to the procedure laid down in Section 52A or its allied Rules / Orders, nor can a strait-jacket formula be applied for insisting compliance of each procedure in a specified timeline to the letter, due to varying situations or requirements of each case. Thus, what is actually required is only a substantial

compliance of the procedure laid down under Section 52A of the NDPS Act and the Standing Order(s)/ Rules framed thereunder, and any discrepancy or deviation in the same may lead the court to draw an adverse inference against the police as per the facts of each and every case. When it comes to the outcome of trial, it is only after taking a cumulative view of the entire material on record including such discrepancies, that the court should proceed either to convict or acquit the accused. Non-compliance of the procedure envisaged under Section 52A may be fatal only in cases where such non-compliance goes to the heart or root of the matter. In other words, the discrepancy should be such that it renders the entire case of the prosecution doubtful, such as instances where there are significant discrepancies in the colour or description of the substance seized from that indicated in the FSL report as was the case in Noor Aga (supra), or where the contraband was mixed in and stored with some other commodity like vegetables and there is no credible indication of whether the narcotic substance was separated and then weighed as required under the Standing Order(s) or Rules, thereby raising doubts over the actual quantity seized as was the case in Mohammed Khalid (supra), or where the recovery itself is suspicious and uncorroborated by any witnesses such as in Mangilal (supra), or where the bulk material seized in contravention of Section 52A was not produced before the court despite being directed to be preserved etc. These illustrations are only for the purposes of bringing clarity on what may constitute as a significant discrepancy in a given case, and by no means is either exhaustive in nature or supposed to be applied mechanically in any proceeding under the NDPS Act. It is for the courts to see what constitutes as a significant discrepancy, keeping in mind the peculiar facts, the materials on record and the evidence

adduced. At the same time, we may caution the courts, not to be hyper-technical whilst looking into the discrepancies that may exist, like slight differences in the weight, colour or numbering of the sample etc. The Court may not discard the entire prosecution case looking into such discrepancies as more often than not an ordinarily an officer in a public place would not be carrying a good scale with him, as held in Noor Aga (supra). It is only those discrepancies which particularly have the propensity to create a doubt or false impression of illegal possession or recovery, or to overstate or inflate the potency, quality or weight of the substance seized that may be pertinent and not mere clerical mistakes, provided they are explained properly. Whether, a particular discrepancy is critical to the prosecution's case would depend on the facts of each case, the nature of substance seized, the quality of evidence on record etc.

31. At the same time, one must be mindful of the fact that Section 52A of the NDPS Act is only a procedural provision dealing with seizure, inventory, and disposal of narcotic drugs and psychotropic substances and does not exhaustively lay down the evidentiary rules for proving seizure or recovery, nor does it dictate the manner in which evidence is to be led during trial. It in no manner prescribes how the seizure or recovery of narcotic substances is to be proved or what can be led as evidence to prove the same. Rather, it is the general principles of evidence, as enshrined in the Evidence Act that governs how seizure or recovery may be proved.

32. Thus, the prosecution sans the compliance of the procedure under Section 52A of the NDPS Act will not render itself helpless but can still prove the seizure or recovery of contraband by leading cogent evidence in this regard such as by examining the seizing officer, producing independent witnesses to the recovery, or

presenting the original quantity of seized substances before the court. The evidentiary value of these materials is ultimately to be assessed and looked into by the court. The court should consider whether the evidence inspires confidence. The court should look into the totality of circumstances and the credibility of the witnesses, being mindful to be more cautious in their scrutiny where such procedure has been flouted. The cumulative effect of all evidence must be considered to determine whether the prosecution has successfully established the case beyond reasonable doubt as held in Noor Aga (supra).

33. Even in cases where there is non-compliance with the procedural requirements of Section 52A, it does not necessarily vitiate the trial or warrant an automatic acquittal. Courts have consistently held that procedural lapses must be viewed in the context of the overall evidence. If the prosecution can otherwise establish the chain of custody, corroborate the seizure with credible testimony, and prove its case beyond reasonable doubt, the mere non-compliance with Section 52A may not be fatal. The emphasis must be on substantive justice rather than procedural technicalities, and keeping in mind that the salutary objective of the NDPS Act is to curb the menace of drug trafficking.

34. At this stage we may clarify the scope and purport of Section 52A sub-section (4) with a view to obviate any confusion. Sub-section (4) of Section 52A provides that every court trying an offence under the NDPS Act, shall treat the inventory, photographs and samples of the seized substance that have been certified by the magistrate as primary evidence.

35. What this provision entails is that, where the seized substance after being forwarded to the officer empowered is inventoried, photographed and thereafter samples are drawn therefrom as per the procedure

prescribed under the said provision and the Rules/Standing Order(s), and the same is also duly certified by a magistrate, then such certified inventory, photographs and samples has to mandatorily be treated as primary evidence. The use of the word "shall" indicates that it would be mandatory for the court to treat the same as primary evidence if twin conditions are fulfilled being (i) that the inventory, photographs and samples drawn are certified by the magistrate AND (ii) that the court is satisfied that the entire process was done in consonance and substantial compliance with the procedure prescribed under the provision and its Rules/Standing Order(s).

36. Even where the bulk quantity of the seized material is not produced before the court or happens to be destroyed or disposed in contravention of Section 52A of the NDPS Act, the same would be immaterial and have no bearing on the evidentiary value of any inventory, photographs or samples of such substance that is duly certified by a magistrate and prepared in terms of the said provision. We say so, because sub-section (4) of Section 52A was inserted to mitigate the issue of degradation, pilferage or theft of seized substances affecting the very trial. It was often seen that, due to prolonged trials, the substance that was seized would deteriorate in quality or completely disappear even before the trial could proceed, by the time the trial would commence, the unavailability of such material would result in a crucial piece of evidence to establish possession becoming missing and the outcome of the trial becoming a foregone conclusion. The legislature being alive to this fact, thought fit to introduce an element of preservation of such evidence of possession of contraband in the form of inventory, photographs and samples and imbued certain procedural safeguards and supervision through the requirement of certification by a magistrate,

which is now contained in sub-section (4) of Section 52A. In other words, any inventory, photographs or samples of seized substance that was prepared in substantial compliance of the procedure under Section 52A of the NDPS Act and the Rules/Standing Order(s) thereunder would have to mandatorily be treated as primary evidence, irrespective of the fact that the bulk quantity has not been produced and allegedly destroyed without any lawful order.

37. Section 52A sub-section (4) should not be conflated as a rule of evidence in the traditional sense, i.e., it should not be construed to have laid down that only the certified inventory, photographs and samples of seized substance will be primary evidence and nothing else. The rule of 'Primary Evidence' or 'Best Evidence' is now well settled. In order to prove a fact, only the best evidence to establish such fact must be led and adduced which often happens to be the original evidence itself. The primary evidence for proving possession will always be the seized substance itself. However, in order to mitigate the challenges in preservation of such substance till the duration of trial, due to pilferage, theft, degradation or any other related circumstances, the legislature consciously incorporated sub-section (4) in Section 52A to bring even the inventory, photographs or samples of such seized substance on the same pedestal as the original substance, and by a deeming fiction has provided that the same be treated as primary evidence, provided they have been certified by a magistrate in substantial compliance of the procedure prescribed. This, however, does not mean that where Section 52A has not been complied, the prosecution would be helpless, and cannot prove the factum of possession by adducing other primary evidence in this regard such as by either producing the bulk quantity itself, or examining the witnesses to the

recovery etc. What Section 52A sub-section (4) of the NDPS Act does is it creates a new form of primary evidence by way of a deeming fiction which would be on par with the original seized substance as long as the same was done in substantial compliance of the procedure prescribed thereunder, however, the said provision by no means renders the other evidence in original to be excluded as primary evidence, it neither confines nor restricts the manner of proving possession to only one mode i.e., through such certified inventory, photographs or samples such that all other material are said to be excluded from the ambit of 'evidence', rather it can be said that the provision instead provides one additional limb of evidentiary rule in proving such possession. Thus, even in the absence of compliance of Section 52A of the NDPS Act, the courts cannot simply overlook the other cogent evidence in the form of the seized substance itself or the testimony of the witnesses examined, all that the courts would be required in the absence of any such compliance is to be more careful while appreciating the evidence."

71. Further, in ***Surepally Srinivas Vs. State of Andhra Pradesh, 2025 SCC Online SC 683***, the Supreme Court has held in para 13 as under:

"13. In Bharat Aambale (supra), this Court held that the purport of Section 52- A, NDPS Act read with Standing Order No. 1/89 extends beyond mere disposal and destruction of seized contraband and serves a broader purpose of strengthening the evidentiary framework under the NDPS Act. This decision stresses upon the fact that what is to be seen is whether there has been substantial compliance with the mandate of Section 52-A and if not, the prosecution must satisfy the court that such

non-compliance does not affect its case against the accused. This is also what has been held in Kashif (supra)."

The judgment passed by the Hon'ble Supreme Court also affirms that if there has been substantial compliance with the mandate of Section 52-A, minor discrepancies in conducting search and seizure proceeding does not affect its credibility.

- 72.** In the light of the aforesaid authoritative pronouncements of the Hon'ble Supreme Court, it is now well-settled that Section 52-A of the NDPS Act is a procedural safeguard intended to ensure the integrity of the seized contraband and to facilitate its proper inventory, sampling, and disposal, and that the requirement thereof is not to be construed as mandatory in the strict sense so as to vitiate the entire prosecution case in every circumstance of non-compliance.
- 73.** The settled legal position makes it abundantly clear that what is required is substantial compliance with the procedure prescribed under Section 52-A, and any minor deviation or procedural lapse would not, by itself, render the recovery or seizure doubtful unless the same goes to the root of the prosecution case or causes serious prejudice to the accused.
- 74.** Reverting to the facts of the present case, it is evident from the record that the seizure of the contraband was duly effected in the presence of witnesses, the seized articles were properly sealed at the spot, and the chain of custody has been consistently

maintained till the time of its dispatch to the Forensic Science Laboratory, wherefrom the chemical examination report confirms the nature of the contraband. The evidence of the seizure witnesses and the Investigating Officer inspires confidence and remains unshaken in material particulars, and no material discrepancy or break in the chain of custody has been brought on record by the defence so as to create any reasonable doubt regarding the authenticity of the seizure. In such circumstances, this Court is of the considered view that there has been substantial compliance with the mandate of Section 52-A of the NDPS Act, and even assuming any minor procedural irregularity, the same does not affect the core of the prosecution case in view of the cogent and reliable evidence establishing recovery and possession of the contraband beyond reasonable doubt.

- 75.** At the outset, it is to be noted that the entire prosecution case rests upon the recovery of contraband from the possession of the appellant during a raid conducted by the police team led by PW-8 Sub-Inspector Shravan Kumar. The prosecution has examined several witnesses including PW-1 Sanjay Nishad, PW-2 Sanjay Bohare, PW-3 Mukesh Kumar, PW-4 Chintamani Giri, PW-5 Kamlesh Singh, PW-6 Suraj Singh Chelak, PW-7 Dharmendra Kanauje (Malkhana Moharrir), and PW-8 Investigating Officer Shravan Kumar, besides relying upon a series of documentary exhibits marked as Ex.P/01 to Ex.P/50.

Recovery and Seizure Evidence

- 76.** The prosecution evidence clearly establishes that acting upon credible information, PW-8 Shravan Kumar along with the police team proceeded to the spot and apprehended the appellant. During search, 25 strips containing 600 capsules of Spasmo Proxyvon Plus were recovered from the conscious possession of the appellant. The seizure is duly recorded in seizure memo Ex.P/08 and Ex.P/13, which have been proved by PW-8 and corroborated by PW-1 and PW-3.
- 77.** PW-1 Sanjay Nishad (Ex.P/22) and PW-2 Sanjay Bohare (Ex.P/23) have supported the prosecution version regarding apprehension of the appellant and recovery of contraband. PW-3 Mukesh Kumar (Ex.P/05 to Ex.P/07) has also corroborated the seizure proceedings. PW-4 Chintamani Giri (Ex.P/08, Ex.P/10, Ex.P/11) has further supported the search and seizure process. Their testimonies, when read together, consistently establish the recovery of the contraband substance from the possession of the appellant.
- 78.** PW-5 Kamlesh Singh (Ex.P/24, Ex.P/29A) has also supported the seizure proceedings and has identified the seized articles. PW-6 Suraj Singh Chelak has corroborated the procedural compliance under Section 57 of the NDPS Act (Ex.P/31), affirming that the report of seizure and arrest was duly forwarded to the superior officer within the prescribed time.

Sealing, Sampling and Chain of Custody

79. The prosecution has further established that the seized contraband was properly sealed at the spot and deposited in the malkhana. PW-7 Dharmendra Kanauje (Malkhana Moharrir) has categorically stated that the seized articles were received in sealed condition and entered in the malkhana register. The relevant entries have been proved through Ex.P/33C and allied documents.
80. The sample was drawn in compliance with Section 52A of the NDPS Act before the learned Judicial Magistrate First Class. The inventory and sampling proceedings are duly reflected in Ex.P/47, wherein the Magistrate has certified the correctness of the inventory and sampling process. The sampling memo and forwarding documents have been proved through Ex.P/32, Ex.P/47A, and Ex.P/49.
81. It is further established that one representative sample (Exhibit A-1) was forwarded through PW-7 and PW-8 for chemical examination. The sample was transmitted to the Forensic Science Laboratory through proper channel vide Ex.P/49 and Ex.P/50.

Chemical Examination and FSL Report

82. The Forensic Science Laboratory report Ex.P/50 clearly establishes that the sample contained Dicyclomine, Tramadol and Acetaminophen, which are psychotropic substances under the

NDPS Act. The report confirms that the seized capsules were not ordinary pharmaceutical products but contained controlled psychotropic substances.

- 83.** PW-8 Shравan Kumar has also deposed that the samples were drawn in the presence of the learned Magistrate and sealed properly, and there was no tampering at any stage. The FSL report has been received in due course and has been duly proved. The Court notes that under Section 293 Cr.P.C. (corresponding to Section 329 of BNSS), the FSL report is admissible in evidence and is treated as expert evidence without requiring formal examination of the expert, unless specifically challenged, which is not the case here.

Compliance of Section 52A, 55 and Chain of Custody

- 84.** A careful scrutiny of Ex.P/32, Ex.P/33C, Ex.P/47, Ex.P/49 and Ex.P/50 shows that the statutory procedure under Section 52A of the NDPS Act has been substantially complied with. The inventory was prepared before the Magistrate, sample was drawn in judicial presence, photographs were taken, and certification was done by the Magistrate.
- 85.** The defence contention regarding violation of Section 52A and Section 55 stands falsified in view of consistent documentary evidence and testimony of PW-7 and PW-8, which clearly establish that the seized contraband remained in sealed condition throughout and the chain of custody remained intact.

Conscious Possession and Presumption

86. Once recovery from the possession of the appellant is established through credible evidence of PW-1 to PW-8 and documentary exhibits Ex.P/08, Ex.P/13, Ex.P/32, Ex.P/47 and Ex.P/50, the statutory presumption under Sections 35 and 54 of the NDPS Act automatically comes into play. The burden shifts upon the accused to rebut the presumption of conscious possession, which the appellant has failed to discharge either through cross-examination or defence evidence. The defence plea that independent witnesses did not support the prosecution case does not dislodge the prosecution version, particularly when official witnesses have withstood cross-examination and their evidence is duly corroborated by documentary records and FSL report.

Conclusion on Point No. (ii)

87. In view of the consistent, cogent and corroborative testimony of prosecution witnesses PW-1 to PW-8, which stands duly supported by the documentary evidence brought on record, particularly Ex.P/01 to Ex.P/50, this Court finds that the prosecution version with regard to recovery, seizure, sampling and forensic confirmation of the contraband stands firmly established. The seizure memo Ex.P/08, recovery memo Ex.P/13, sampling memo Ex.P/32, judicial inventory Ex.P/47, forwarding memo Ex.P/49 and the FSL report Ex.P/50 collectively

form a complete and unbroken chain of evidence which clearly establishes the recovery of 600 capsules of Spasmo Proxyvon Plus containing psychotropic substance, weighing 300 grams, from the conscious and exclusive possession of the appellant.

- 88.** The testimonies of the official witnesses inspire confidence and remain unshaken in cross-examination on material particulars. There is nothing on record to discredit their version or to suggest any false implication or fabrication. The seizure and recovery proceedings have been duly proved in accordance with law, and the chain of custody of the seized contraband has been consistently maintained till its examination by the Forensic Science Laboratory, whose report Ex.P/50 conclusively confirms the nature of the contraband substance.
- 89.** In such view of the matter, this Court is of the considered opinion that the learned Trial Court has rightly appreciated the oral and documentary evidence in its correct perspective while arriving at the finding on Point No. (ii).
- 90.** Accordingly, Point No. (ii) is answered in the affirmative.

Conclusion of the Judgment

- 91.** It is well settled that in prosecutions under the NDPS Act, once the prosecution establishes, on the basis of reliable and admissible evidence, the factum of recovery and conscious possession of contraband from the accused, statutory presumptions under Sections 35 and 54 of the NDPS Act come

into operation, and the burden shifts upon the accused to rebut the same by leading cogent and credible evidence, which the appellant has failed to do in the present case. This Court, upon careful scrutiny of the entire evidence on record, including the testimony of PW-1 to PW-8 and documentary exhibits Ex.P/01 to Ex.P/50, finds that the prosecution has proved a complete, consistent, and unbroken chain of circumstances beginning from interception of the appellant, recovery of contraband from his possession, preparation of seizure and recovery memos, drawing and forwarding of samples in accordance with law, maintenance of proper chain of custody, and culminating in the FSL report affirming the contraband nature of the seized substance. The testimony of the official witnesses is consistent, cogent, and inspires confidence, and no material contradiction or infirmity has been brought on record so as to discredit the prosecution case or rebut the statutory presumption.

- 92.** This Court also finds that the safeguards under the NDPS Act, including compliance with Sections 42, 43, 50 and 52A of the Act, have been duly considered in the facts of the present case and the procedural requirements have either been substantially complied with or are otherwise inapplicable in view of the nature of recovery effected from the bags and articles carried by the appellants in transit at a public place. The findings recorded by the learned Trial Court are based on proper appreciation of evidence, correct application of law, and a well-reasoned analysis

of the entire material on record. The said findings do not suffer from any perversity, illegality or infirmity warranting interference by this Court in exercise of appellate jurisdiction.

- 93.** In view of the foregoing discussion, this Court is of the considered opinion that the prosecution has been able to prove beyond reasonable doubt that the appellant was in conscious and unlawful possession of the contraband substance, namely 600 capsules of Spasmo Proxyvon Plus containing psychotropic substance weighing 300 grams, and that the recovery, seizure and forensic confirmation thereof stand duly established in accordance with law. The conviction of the appellant recorded by the learned Trial Court under Section 22(c) of the NDPS Act is therefore found to be well-founded and legally sustainable.
- 94.** As a consequence of the aforesaid analysis and findings, this Court finds no merit in the present criminal appeal preferred by the appellant. The appeal, being devoid of substance, is hereby **dismissed**. The judgment of conviction and order of sentence passed by the learned Trial Court is affirmed.
- 95.** The appellant is reported to be in custody. He shall undergo the sentence as awarded by the learned Trial Court.
- 96.** Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail, where the appellant is undergoing their jail sentence to serve the same on the appellant informing him that he is at liberty to assail the present judgment

passed by this Court by preferring the appeal before the Hon'ble Supreme Court with the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee.

- 97.** Let a copy of this judgment and the original records be transmitted to the trial Court concerned forthwith for necessary information and compliance.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

Anu

HEAD NOTE

Non-compliance with Sections 42, 50 and 52-A of the Narcotic Drugs and Psychotropic Substances Act, 1985, by itself does not vitiate the prosecution case unless prejudice is shown or the recovery itself becomes doubtful. Procedural safeguards cannot override substantive proof, and where recovery, possession and chain of custody stand duly established through cogent evidence, conviction can be sustained notwithstanding such lapses.