



2025:CGHC:26255-DB

AFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRA No. 2234 of 2023**

Ajay Pandey S/o Sh. Shiv Shankar Pandey, Aged About 33 Years R/o - 111, Maheba Malkiya, Kund, Aurhari Derva Pratapgarh, Uttar Pradesh.

--- Appellant**versus**

Union of India, Directorate of Revenue Intelligence Raipur Regional Unit, Through Sh. Sandeep Kumar, Intelligence Officer, aged about 30 Years, Panchsheel Nagar, Civil Lines, Raipur Chhattisgarh.

--- Respondent**CRA No. 1989 of 2024**

Dharam Singh S/o Shri Jarnail Singh, aged about 40 years R/o Chahal, P.S Faridkot, Distt- Punjab, (Punjab) 151203

--- Appellant**Versus**

Union of India Directorate of Revenue Intelligence, Raipur- Regional Unit, Through – Sh. Sandeep Kumar, Intelligence Officer, 30- Panchsheel Nagar, Civil Lines, Raipur, Distt- Raipur (C.G.)

--- Respondent**CRA No. 2282 of 2023**

Balwinder Singh S/o Dalbir Singh, aged about 43 years R/o V.P.O. Vithwan, Post Office Bham, Tahsil Batala, District Gurdaspur (Punjab)

--- Appellant**Versus**

Directorate of Revenue Intelligence Raipur Regional Unit. Through Sh. Sandeep Kumar, Intelligence Officer, 30, Panchsheel Nagar, Civil Lines, Raipur Chhattisgarh.

--- Respondent(s)

CRMP No. 1012 of 2024

Directorate of Revenue Intelligence (DRI) Government of India, Indore Zonal Unit, Through Deputy Director, Directorate of Revenue Intelligence Government of India, Raipur Regional Unit 30, Panchsheel Nagar, Civil Lines, Raipur, District- Raipur, Chhattisgarh. Pin- 492001

---**Petitioner**

Versus

Shri Ravishankar Mishra S/o Shri Suryabali Mishra Aged About 41 Years Address- Batoa, Parsipur, Pratapgarh, Uttar Pradesh.

--- **Respondent**

(Cause-title taken from Case Information System)

For Appellant in CRA 2234/2023 : Mr. Nikhil Wadhvani, Advocate

For Appellant in CRA 2282/2023 : Mr. Punit Ruparel, Advocate

For Appellant in CRA 1989/2024 : Mr. Jameel Akhtar Lohani, Advocate

For Respondent/DRI & : Mr. Anumeh Shrivastava, Advocate
For Petitioner/DRI in CRMP
No. 1012/2024

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Bibhu Datta Guru, Judge

Judgment on Board

Per Ramesh Sinha, Chief Justice

20.06.2025

1. Since the above-captioned criminal appeals and CRMP have arisen out of one and same judgment and since common question of fact and law is involved in these matters, they have been heard together and are being disposed of by this common judgment.
2. The above-captioned three criminal appeals i.e. CRA Nos. 2234/2023, 2282/2023 & 1989/2024 have been preferred under

Section 374(2) of the Code of Criminal Procedure 1973, (*for short the, Cr.P.C.*) against the impugned judgment of conviction and order of sentence dated 30.10.2023 passed by the learned Special Judge (NDPS), Janjgir, District - Janjgir-Champa (C.G.) in Special Case (NDPS) No. 11/2020, by which the appellants **Ajay Pandey, Dharam Singh and Balwinder Singh** have been convicted for offences punishable under Section 20(b)(ii)(C) read with Section 29(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act') and sentenced them to undergo rigorous imprisonment for 20 years and fine of Rs.2,00,000/- each, in default of payment of fine, to further undergo simple imprisonment for 2 years.

3. CRMP No. 1012/2024 has been filed by the petitioner / Directorate of Revenue Intelligence (DRI) Government of India under Section 378(3) of CrPC seeking leave to appeal against the impugned judgment of acquittal dated 30.10.2023 passed by the learned Special Judge (NDPS), Janjgir, District - Janjgir-Champa (C.G.) in Special Case (NDPS) No. 11/2020 by which, the respondent/accused **Ravishankar Mishra** has been acquitted of the offences punishable under Section 20(b)(ii)(C) read with Section 29(1) of the NDPS Act by giving benefit of doubt.
4. Brief facts of the case are that on dated 18.02.2020 at about 10:05 AM, Senior Intelligence Officer Sh. Roshan Kumar Gupta received a secrete information about transporting approximately

800 Kilogram illegal cannabis (Ganja) from Sunki, Andra Pradesh to Lucknow via Champa, Chhattisgarh in a Truck bearing registration No. PB-12Q-7045 under guidance of a Mahindra Scorpio SUV bearing registration No. UP-70DN-2656. The aforesaid information was reduced into writing by him and sent to his Senior Officer Sh. Nitin Agrawal, Deputy Director, DRI, Raipur Regional Unit, who constituted a preventive team (raiding party) and intelligence officer Sh. Gaurav Pandey was appointed seizure officer, in case of any seizure. Sh. Nitin Agrawal (Deputy Director), Sh. Sanjay Kumar, (Deputy Director), Sh. Upendra Yadav (Senior Intelligence Officer), Sh. Pawan Dongre (Intelligence Officer), Vaibhav Ojha (Intelligence Officer), Rahul Sharma (Intelligence Officer), Sh. Arun Kumar Gajbe (Superintendent), Sh. Anuj Kumar (Inspector) and Brajesh Kumar Maurya (Inspector) were the members of aforesaid preventive team.

5. On dated 18.02.2020 at about 9:00 PM, the aforesaid Special Case (NDPS) No. 11/2020 preventive team reached at Ghatoli Chowk (Champa), where intelligence officer Gaurav Pandey after informing about secrete information in detail to two persons and obtaining their consent, included them in the said team. Thereafter, they reached approximately 200 Meter away towards Prakash Industries from Ghatoli Chowk and started to wait for aforesaid vehicles. At about 10:00 PM, a white Scorpio bearing registration No. UP-70DN-2656 reached there, which was

stopped by intelligence officer Gaurav Pandey and inquired the names of two persons sit in the said vehicle. The driver told his name as Ravi Shanker Mishra and other told his name as Ajay Pandey. The vehicle was got parked in the side of road. After 5-10 minutes, a truck bearing registration No. PB-12Q-7045 reached there, which was stopped by team and inquired the name of driver of vehicle, who told his name as Dharam Singh and shown his Adhar card bearing number 670796725635 for his identification. Thereafter, trailer of aforesaid truck was searched by officers and found that thickness of floor of trailer was comparatively higher than normal, seems to be modified. There was an iron sheet towards left side, which was opened by officers and found cavities therein with iron trays. Some packets were found in those trays when taken out from cavities, so above named persons were inquired about those packets. In the inquiry, they disclosed cannabis (Ganja) in those packets, transporting from Sunki, Andra Pradesh to Lucknow, Uttar Pradesh for Ajay Jaiswal (absconded accused). The aforesaid place was a public road, therefore, with the consent of above named three persons and panch witnesses, the team brought the aforesaid vehicles in police station, Champa for further proceedings.

6. Thereafter, trailer was searched sequentially, in which first of all left side iron sheet were opened and iron trays, total Nine in number, were taken out. Out of those nine trays, eight trays were filled with packets and one was empty. After that, on search of

tool-box of said truck, one packet was found, which was marked as "P-1". The substance in packet was found cannabis after testing with "Narcotic Drug Detection Kit", so all the packets were taken out and marked as "P-2" to "P-157". The substance of those packets was also tested with the said kit and on testing, substance in those packets was also found cannabis. To find out the total quantity of cannabis in all the packets, weight of all the packets was done and on weighment, it was found 837.970 Kilogram in total. After that, cabin of truck was searched and in the said search a sword and documents pertaining to registration of vehicle No. PB-12Q-7045 and CG-04JB-8237 and its number plates were found. On inquiry, Dharam Singh disclosed the name of owner of said truck as Balwinder Singh resident of Punjab. Thereafter, vehicle Scorpio was searched, but nothing suspicious was found in it. Personal search of above named three persons was taken before Gazetted officer Sh. Upendra Yadav, Senior Intelligence Officer, DRI, Indore Zonal Unit and in their search, two mobile phones and wallet were found from Dharam Singh, one mobile phone and a wallet was found from Ajay Pandey and one mobile phone and a wallet was found from Ravi Shanker Mishra. On examination of mobile phones, it was found that Ajay Pandey has called several time from his mobile Nos. 9161392112, 8303502859 to Dharam Singh on his mobile Nos. 8959166802 and 8917320132.

7. Thereafter, officers seized all 157 packets, Truck No. PB-12Q-7045, vehicle Scorpio No. UP-70DN-2656, number plates of vehicle No. PB-12Q-7045 and CG-04JB-8237, sword, mobiles phones under Section 42 of NDPS Act and sealed with seal of Directorate of Revenue Intelligence, Indore Zonal Unit. Intelligence officer Sh. Gaurav Pandey prepared the panchnama about the proceedings taken place on spot in presence of panchas and independent persons on dated 19.02.2020 at 2:30AM and seized vehicles, iron trays, 157 packets of cannabis, sword, aforesaid number plates and mobile phones were deposited in malakhana of police station, Champa. After that, the above named three persons made their statement under Section 67 of NDPS Act voluntarily, so same were reduced into writing. In the aforesaid statements, they have admitted their involvement in smuggling of cannabis, so they were arrested and after medical examination produced before Court.
8. On dated 19.02.2020, seizure officer Gaurav Pandey in presence of Executive Magistrate took 2 samples of 30 grams each from each seized packet (total 314 packets of samples) and wrapped in a plastic polythene. Thereafter, every packet of sample was kept in yellow colour envelope and marked with P1S1, P1S2 up to P157S1, P157S2. After that, aforesaid total 314 packets of sample were sealed by intelligence officer with metal seal brought by Tehsildar-cum-Executive Magistrate and thus seizure proceeding were done in this respect under Section 52A of NDPS

Act. Proceeding under Section 52A of NDPS Act were also completed in respect of aforesaid seized vehicles before Tehsildar. Photographs of entire aforesaid proceedings were also taken. After the aforesaid proceeding, the seized cannabis and vehicles etc. were again deposited in malkhana of police station, Champa and samples taken were deposited in malkhana of DRI at Raipur. On dated 20.02.2020, Sh, Gaurav Pandey informed his senior Sh. Roshan Kumar Gupta about aforesaid seizure proceedings and arrest of accused and thus made the compliance of Section 57 of NDPS Act.

9. Thereafter, senior intelligence officer Sh. Roshan Kumar Gupta authorized intelligence officer Sh. Sandeep Kumar for further investigation in this case. On dated 02.03.2020, Sh. Sandeep Kumar through test memo No.1/2020 deposited 157 sealed packets of first sample marked with P1 S1 to P157 S1, out of total 314 packets, in the malkhana of Indore zonal unit for sending to Govt. Opium & Alkaloid Factories, Neemuch, Madhya Pradesh (will be referred as FSL hereinafter) for examination and on the basis of memo No. 01/2020 dated 11.03.2020 requested to FSL for examination, but because of complete lock down in March due to Covid-19, examination of samples could not be sent and finally on dated 23.04.2020, sent those samples to FSL for examination through intelligence officer Azaz Khan. After examination of said samples, FSL sent its report No. 13016 dated 19.05.2020, which confirmed the seized substance as cannabis (Ganja).

10. Accused Ajay Pandey, Dharam Singh and Ravi Shanker Mishra have made their statements voluntarily on dated 19.02.2020, details of which are fully mentioned in para No. 7 to 9 of complaint respectively. On the basis of statement of Ajay Pandey, house of Ajay Jaiswal was searched by DRI, Lucknow and in the said search 4 packets (Pudiya) of Ganja were found, which were seized by DRI Lucknow and notice/summons were served upon Ajay Jaiswal for recording his statement, but he did not appear before DRI. During statement of accused Ajay Pandey, his bank account statement of account No. 4512749693 was received and as per the said statement, Ajay Pandey has transferred ₹ 3,000/- on dated 02.11.2019, ₹ 1,000/- on dated 22.11.2019, ₹ 1,000/- on dated 08.02.2019 and ₹ 15,000/- on dated 12.02.2020 to accused Dharam Singh. Ajay Pandey has also deposited ₹ 50,000/- in the account No. 4282011501241 of Chodipilli on dated 16.10.2020 and ₹ 50,000/- in the account of Ganga Rao on dated 22.01.2020 and ₹ 20,000/-, ₹ 25,000/-, ₹ 5,000/- and ₹ 15,000/- have been transferred in the account of Gopi on dated 04.11.2019, 07.11.2019, 14.01.2020 and 06.02.2020 respectively, out of which ₹ 15,000/- transferred on 06.02.2020, has been transferred in the account of accused Balwinder Singh. Accused Ajay Pandey has also transferred ₹ 5,000/- on dated 14.01.2020 and ₹ 2,000/- on dated 28.01.2020 in the account of Balwinder Singh. Beside this, Mevalal Jaiswal, father of Ajay Jaiswal has transferred ₹2,00,000/- in the account No. 4512749693 of Ajay Pandey on

dated 16.10.2019 and he has transferred the said amount to other persons. In this respect, account statement has also been obtained from bank of accused Ajay Pandey on dated 17.07.2020. The facts mentioned in para No.12 to 15, 21, 22 of complaint of DRI are pertaining to other absconded accused persons, so being irrelevant for disposal of this case against present accused not mentioned here.

11. An Email dated 01.05.2020 and a letter dated 05.06.2020 were sent to R.T.O. Gurdaspur (Punjab) for providing information about seized truck No. PB-12Q-7045 and in response, on dated 30.06.2020, R.T.O. Gurdaspur sent the information, according to which Balwinder Singh was found owner of aforesaid vehicle. On dated 28.02.2020, a letter was written to DRI, Ludhiana zonal unit for search of house of Dharam Singh. In response, DRI, Ludhiana vide its letter dated 22.06.2020 informed that nothing suspicious was found in his house during search. On dated 28.02.2020, a letter was written to DRI, Lucknow for search of houses of Ajay Pandey and Ravi Shanker Mishra, but DRI, Lucknow did not take search due to Covid pandemic. On dated 05.06.2020, a letter was written to DRI, Ludhiana for search of houses of Baldev Singh and Balwinder Singh, but nothing suspicious was found in their houses as informed by DRI, Amritsar.
12. On dated 15.07.2020, house of Balwinder in RDI Colony, Tatibandh, Raipur was searched and during search several power of attorneys, agreements, affidavits, rent agreement, agreements

of different vehicles, documents of different vehicles, cheque books of different persons, RC of different vehicles, ID cards of different persons, two mobile phones, number plate of vehicle No. CG-10C-7364 and other documents were found and in this respect panchnama dated 15.07.2020 was prepared. During panchnama proceedings Balwinder has told his wrong name and also tried to flee from there. In the said search, two tempered engine number plates were also found. Thereafter, Balwinder was asked about his vehicle No. PB-12Q-7045 and in response he informed that vehicle is parked near his house. After that, officers and panches along with Balwinder went to check his truck No. PB-12Q-7045 at Ring Road No.2 Tatibandh, Raipur, but there was a trailer truck with number plate PB-12Q-7045, having Chasis No. MAT447221C3G19351 and Engine No. 21G63273332. In search of cabin of said vehicle, documents of vehicle No. PB-12Q-7045 were found in which Chasis number and Engine number were same as found on said vehicle. In this respect panchnama was prepared. They brought Balwinder to DRI office for recording his statement, where he got recorded his statement voluntary, detail of which are fully mentioned in para No. 25 to 27 of complaint.

13. On the basis of statement of Ajay Pandey dated 19.02.2020, CDR of his mobile Nos. 9161392112, 8303502895, mobile numbers of accused Dharam Singh 8917320132, 8959266802, mobile number Balwinder Singh 9340085880 along with certificate under

Section 65B dated 27.07.2020 were taken into possession. As per the aforesaid CDRs, Ajay Pandey was giving directions continuously to Dharam Singh telephonically and Balwinder Singh was also in touch with them.

14. After completion of investigation, charge-sheet was filed against accused Ajay Pandey, Dharam Singh, Ravi Shanker Mishra, Balwinder Singh along with other accused persons under Section 8(c), 20(b)(ii)(C) and Section 29 of NDPS Act before the Court of Special Judge (NDPS) Janjgir, District – Janjgir-Champa (C.G.)
15. On the basis of material placed on file, when prima-facie case was found against accused persons, so they were charged as noted above. Accused persons did not plead guilty and claimed trial.
16. In support of its case prosecution has examined as many as 11 following witnesses : -

Witness No.	Name of the witness	Designation
PW1	Roshan Kumar Gupta	Senior Intelligence Officer, DRI
PW2	Gaurav Pandey	Intelligence Officer, DRI
PW3	Sandeep Kumar	Intelligence Officer, DRI
PW4	Vaibhav Ojha	Senior Intelligence Officer, DRI
PW5	Dr. Ramvijay Sharma	Tehsildar Champa
PW6	Santosh Pandey	Head Constable, P.S. Champa
PW7	Azaz khan	Intelligence Officer, DRI
PW8	Pawan Kumar Dongre	Intelligence Officer, DRI
PW9	Ankit Gupta	Independent Witness
PW10	Nitin Agrawal	Deputy Director
PW11	Praveen Kumar Mishra	Senior Intelligence Officer, DRI

17. Beside the aforesaid ocular evidence, prosecution has also produced the following documents and articles:-

Exhibit No.	Nature of Documents / Articles
Exhibit No.	Nature of Documents /Articles
Ex.P-1	:- Secrete Information report , Dated 18.02.2020
Ex.P-2	:- Letter to Deputy Director, Lucknow for search of house and office of Ajay Jaiswal Dated 19.02.2020.
Ex.P-3	:- Report under Section 57 of the NDPS to Senior Intelligence Officer, Dated 20.02.2020 and authorization of Sandeep Pandey for further investigation
Ex.P-3A	:- Receipt by Intelligence officer Sandeep Pandey for receiving case file for investigation, dated 26.02.2020,
Ex.P-4 (3 pages)	:- Letter to Manger of ICICI Bank, Visakhapatnam about transaction details of Account No. 428201501241 Dated 06.05.2020.
Ex.P-5	:- Letter to Branch Manager PNB for address etc. of account No. 1192000100183727 of Baldev Singh and account No. 1192001500178722 of Manpreet Singh through Email.
Ex.P-6 (2 pages)	:- Letter to Manager of PNB Gurudaspur for Information of A/c No. 1192000100183727 of Baldev Singh, Dated 06.05.2020.
Ex.P-7	:- Reminder-1 to Manager of Allahabad Bank, Pratapgarh (UP) of A/c No. 59174876855 Dated 06.05.2020.
Ex.P-8 (2 pages)	:- Letter to Manager of Allahabad Bank, Pratapgarh (UP) of A/c No. 59174876855 of Anup Kumar Pandey, Dated 13.05.2020.
Ex.P-9 (7 pages)	:- Panchnama dated 15.07.2020 about search of house of accused Balwinder Singh
Ex.P-10 (2 pages)	:- Panchnama dated 15.07.2020 about search of vehicle of accused Balwinder Singh with copies of photographs
Ex.P-11 (On foot of Ex.P-1)	:- Order for Constitution of raiding party along with details of members and appointment of Gaurav Pandey as Seizure Officer, dated 18.02.2020
Ex.P-12	:- Notice Under Section 50 of NDPS to Dharam Singh, dated 19.02.2020
Ex.P-13	:- Notice Under Section 50 of NDPS to Ajay Pandey , dated 19.02.2020
Ex.P-14	:- Notice Under Section 50 of NDPS to Ravishankar Mishra , dated 19.02.2020
Ex.P-15 (7 Pages)	:- Panchnama about entire spot proceedings dated 18/19.02.2020
Ex.P-16	:- Letter to Malkhana-In-Charge , P.S. Champa,

		dated 19.02.2020 at 3:00 AM for keeping Ganja safely.
Ex.P-16A	:-	Receipt of aforesaid letter.
Ex.P-17	:-	Arrest Memo of Ajay Pandey dated 19.02.2020
Ex.P-18	:-	Arrest Memo of Ravi Shankar Mishra dated 19.02.2020
Ex.P-19	:-	Arrest Memo of Dharam Singh dated 19.02.2020
Ex.P-20 & Ex.P-23	:-	Application for Medical examination of Ajay Pandey , dated 19.02.2020 and MLC
Ex.P-21 & Ex.P-24	:-	Application for Medical examination of Dharam Singh , dated 19.02.2020 and MLC
Ex.P-22 & Ex.P-25	:-	Application for Medical examination of Ravishankar Mishra , dated 19.02.2020 and MLC
Ex.P-26 & Ex.P-26 A	:-	Application to Tehsildar Under Sec. 52-A of NDPS Act, dated 19.02.2020 and certificate by Magistrate.
Ex.P-27 & Ex.P-27 A	:-	Letter to Malkhana-In-Charge , P.S. Champa, dated 19.02.2020 about giving seized substance for proceedings U/s 52-A of NDPS
Ex.P-28 & Ex.P-28 A	:-	List of seized articles (Ganja & Samples) in compliance of Sec. 52-A of NDPS Act, dated 19.02.2020 and certificate of Magistrate
Ex.P-29	:-	List of seized vehicles and certificate of Magistrate
Ex.P-29 A	:-	Letter to SDM Champa for correction of vehicle Scorpio UP-70DN-2656
Ex.P-30 & Ex.P-30 A	:-	Letter to Malkhana In-charge of P.S.Champa for keeping the seized ganja vehicle etc. dated 19.02.2020 at 8:00 PM in safe custody and receipt of said Police Station.
Ex.P-31	:-	Letter to FSL i.e. Govt. Opium & Alkaloid Factories, Neemuch (M.P.), dated 11.03.2020 for chemical analysis of 157 samples of recovered cannabis (Ganja)
Ex.P-32(C) (2 pages)	:-	Copy of malkhana register about keeping seized articles in P.S. Champa
Ex.P-33 (7 pages)	:-	FSL Report (Govt. Opium & Alkaloid Factories, Neemuch), dated 19.05.2020
Ex.P-34	:-	Authorization of Sandeep Kumar to deposit samples etc. in Indore Malkhana, dated

		01.03.2020
Ex.P-35 & Ex.P- 76	:-	Test Memo No. 1/2020 of DRI with sample seal. (for sending to FSL) and (Received from FSL)
Ex.P-36 (C) & Ex.P-38 (C)	:-	Copy of Malkhana Register of Indore office/malkhana, dated 02.03.2020 etc.
Ex.P-37	:-	Authorization letter to Azaz Khan for deposition of samples in FSL (Govt. Opium & Alkaloid Factories, Neemuch) , dated 23.04.2020
Ex.P-39	:-	Receipt of FSL (Govt. Opium & Alkaloid Factories, Neemuch) dated 23.04.2020
Ex.P-40	:-	Notice to Ajay Jaiswal Under Section 67 of NDPS, dated 24.06.2020
Ex.P-41	:-	Notice to Ajay Jaiswal Under Section 67 of NDPS, dated 06.07.2020
Ex.P-42	:-	Letter to Manager Kotak Mahindra Bank, Raipur dated 13.07.2020 for details of A/c No. 4512749693 of Ajay Pandey
Ex.P-43	:-	Letter of Manager Kotak Mahindra Bank, dated 16.04.2020 with aforesaid A/c details.
Ex.P-43	:-	Letter to Manager ICICI Bank Visakhapatnam for details of A/c No. 428201501241 of Shree Gangaro.
Ex.P-44 (13 Pages)	:-	Mail of ICICI Bank with details of aforesaid A/c No. 428201201241 of Shree Gangaro
Ex.P-45 (29 Pages)	:-	Information/details of account A/c No. 1192000100183727 of Baldev Singh given by aforesaid bank to DRI.
Ex.P-46 (11 Pages)	:-	Information/details of A/c No. 59174876855 of Anup Pandey given by Allahabad bank
Ex.P-47	:-	Letter to Manager Axis Bank Lucknow, dated 29.07.2020 for details of A/c No. 919010009901782 of Ajay Jaiswal
Ex.P-48 (11 Pages)	:-	Information/details of A/c No. 9190100099 01782 of Ajay Jaiswal given by Axis Bank.
Ex.P-49 & Ex.P-51 (21 Pages)	:-	Information/details of vehicle PB12Q7045 of Balwinder Singh by RTO Gurudaspur through E-mail.
Ex.P-50	:-	Letter to Regional Transport Office, Civil Lines, Kotli Nangal Gurdaspur, Punjab, dated 05.06.2020 for details of vehicle PB12Q7045
Ex.P-52	:-	Summon to accused Manpreet Singh, Under Section 67 of NDPS Act, dated 06.07.2020

Ex.P-53	:-	Summon to accused Manpreet Singh, Under Section 67 of NDPS Act, dated 24.06.2020
Ex.P-54	:-	Summon to accused Baldev Singh, Under Section 67 of NDPS Act, dated 24.06.2020
Ex.P-55	:-	Summon to accused Baldev Singh, Under Section 67 of NDPS Act, dated 06.07.2020
Ex.P-56	:-	Summon to accused Balwinder Singh Under Section 67 of NDPS Act, dated 24.06.2020
Ex.P-57	:-	Summon to accused Balwinder Singh Under Section 67 of NDPS Act, dated 06.07.2020
Ex.P-57	:-	Summon to accused Balwinder Singh Under Section 67 of NDPS Act, dated 15.07.2020
Ex.P-58 (11 Pages)	:-	Statement of Balwinder Singh , dated 15/16.07.2020 Under Section 67 of NDPS Act
Ex.P-59	:-	Certificate Under Section 65B of the Indian Evidence Act, dated 16.07.2020 about call details of mobile phone No. 7587301326 and 8872122950 and A/c statement print out, issued by Balwinder Singh S/o Dalbeer Singh
Ex.P-60 (7 Pages)	:-	Whatsapp Messages of Balwinder Singh's mobile phone, dated 20.06.2020
Ex.P-61 (28 Pages)	:-	Seizure Memorandum of two mobile Phone of Opo Company and two mobile phone of Lawa Company from Balwinder Singh Under Section 42 of the NDPS Act , dated 16.07.2020
Ex.P-62 & Ex.P62(A)	:-	Arrest Memo of Balwinder Singh , dated 16.07.2020 & information to him about grounds of his arrest
Ex.P-63 & Ex.P-64	:-	Application for Medical Examination of Balwinder Singh , dated 17.07.2020 & MLC
Ex.P-65	:-	Report Under Section 57 of the NDPS Act, dated 16.07.2020 about Balwinder Singh
Ex.P-67	:-	Letter to Nodel Officer, Reliance Jio for Providing call statement of Phone No. 9161392112, 8303502895 (both of Ajay Pandey), 6305840419, 8917320132, 6371836419 (both of Dharam Singh) 7751862263, 9335867915, 7081444808, 9340085880 (Balwinder), 8280891724, 6281852864, 8959166802, 7587455988, 9021403733 dated 28.02.2020
Ex.P-67 to Ex.P.-71	:-	CDR & CAF report of telephone numbers dated 28.02.2020 Ex.P-67 (86 pages) of 8303502895 of Ajay Pandey Ex.P-68 (266 pages) of 6305840419 of Baldev Ex.P-69 (13 pages) of 8917320132 of Dharam Singh Ex.P-70 (99 pages) of 6371836419 of

		David @ David Ex.P-71 (152 pages) of 9340085880 of Balwinder Singh
Ex.P-72	:-	Summon to accused Dharam Singh Under Section 67 of NDPS Act, dated 19.02.2020
Ex.P-73	:-	Statement of Dharam Singh Under Section 67 of NDPS Act, dated 19.02.2020
Ex.P-4(c)	:-	Malkhana Register entry, dated 19.02.2020
Ex.P-75(c)	:-	Nakal Rojnamcha Sanha 44 , Police Station Champa, dated 19.02.2020
Ex.P-76	:-	Same as Ex.P-35, sent back by FSL with report.
Ex.P-77	:-	Summon to accused Ajay Pandey Under Section 67 of NDPS Act, dated 19.02.2020
Ex.P-78	:-	Summon to accused Ravishankar Mishra Under Section 67 of NDPS Act, dated 19.02.2020
Ex.P-79	:-	Statement to Ajay Pandey Under Section 67 of NDPS Act, dated 19.02.2020
Ex.P-80	:-	Statement to Ravishankar Mishra Under Section 67 of NDPS Act , dated 19.02.2020
Ex.P-81	:-	Letter to Deputy/Assistant Commissioner CGST and Central Excise Division Korba, dated 18.02.2020
Ex.P-82 (7 pages)	:-	Status report about proceeding of recovery of cannabis, sent to Deputy Director, DRI on dated 27.02.2020.
Ex.P-83 (5 pages)	:-	Letter to Deputy Director, DRI Ludhiana, dated 28.02.2020 for follow up searches in house of Dharam Singh at Chahal, Faridkot
Ex.P-84 (5 pages)	:-	Letter to Deputy Director, DRI, Ludhiana dated 05.06.2020 for follow up searches in house of Balwinder and Baldev
Ex.P-85 (2 pages)	:-	Letter to Deputy Director, DRI, Raipur, dated 22.06.2020 about search in house of Balwinder at Raipur
Ex.P-86	:-	Letter to Deputy Director, DRI, Visakhapatnam , dated 05.06.2020 for search in house of other absconded accused persons
Ex.P-87	:-	Letter to Deputy Director, DRI, Raipur, dated 24.06.2020 for search in house of absconded accused Chodipilli.
Ex.P-88	:-	Incident Report from DRI Vishkhapatnam, dated 24.06.2020
Ex.P-89	:-	Letter to Deputy Director, DRI, Bhubaneswar dated 05.06.2020 for search of house of absconded accused Dabida Karad @ David.
Ex.P-90 (3 pages)	:-	Letter to Deputy Director, DRI, Raipur, dated 17.07.2020 by DRI, Bhubaneswar (response of

		above)
Ex.P-91	:-	Letter to Deputy Director, DRI, Bhopal, dated 26.06.2020 for providing certificate U/s 65B of Evidence Act.
Ex.P-92	:-	Certificate U/s 65B of Evidence Act about mobile numbers from Nodal Officer, Jio in response of above letter
Ex.P-93	:-	Certificate under Section 65B of Evidence Act by accused Ajay Pandey.
Article 1 to 9	:-	Photographs about proceedings Under Section 52A of NDPS Act.
Article 10 to 17	:-	Mobile phones recovered/seized from accused persons

18. After prosecution evidence, statement of accused persons were recorded Section 313 Cr.P.C., in which all the incriminating material was put to them and after recording their replies, they entered into the defence, but they have given no evidence, either oral or documentary, in their defence.
19. After appreciation of oral as well as documentary evidence led by the prosecution the learned trial Court has convicted and sentenced accused / appellants **Ajay Pandey, Dharam Singh and Balwinder Singh** as mentioned in paragraph 2 of this judgment, however, acquitted the accused **Ravishankar Mishra** from the charges levelled against him. Hence, above-captioned appeals and petition has been filed.
20. It has been argued by Mr. Nikhil Wadhvani, learned counsel for the appellant **Ajay Pandey in CRA No. 2234/2023** that the prosecution has failed to prove its case beyond reasonable doubt. Information of informer was not authenticated under Section 65B of the Evidence Act. He submitted that PW-1,

Roshan Kumar Gupta, Senior Intelligence Officer, Raipur, received the secret information which was not written by hand, but was written by computer typing and he has not made any statement regarding who wrote the computer-written informer information or printed it from the computer and it is not even certified by the certificate of Section 65B Evidence Act, due to which the information of the informer itself is beyond doubt. These are not certified and the suggestion given by the defense that the informant information was recorded in Chopra police station after the proceedings of the case seems more probable. He further submitted that there are material discrepancies and compliance of Sections 42, 55 and 57 of NDPS Act has not been made out and no investigation has been done from the owner of the vehicle. He also submitted that Section 41(2) of the NDPS Act is not duly followed. Roshan Kumar Gupta is a Senior Intelligence Officer and a gazetted officer and when a gazetted officer gets any information about an offense under the NDPS Act, then he can investigate the case himself or can appoint any of his subordinates to prosecute any person, but, Roshan Kumar Gupta, despite being a gazetted officer, did not himself investigate the information received and did not order any officer or employee under him, but communicated it to his Senior Officer Nitin Agrawal, which was not in accordance with the law.

21. Mr. Wadhvani contended that proceedings under Section 57 were not conducted in accordance with the law: Roshan Kumar

Gupta (PW-01) gave informant information to Nitin Agarwal (PW-10), then Nitin Agarwal formed a team and Gaurav Pandey (PW-02) was appointed as the seizure officer. In this way, Seizure Officer Gaurav Pandey (PW-02) was working on the instructions of Nitin Agarwal (PW-10), but the report prepared him on 20.02.2000 under Section 03 of the Act was not sent to Nitin Agarwal (PW-10) but was sent to the S.O. Roshan Kumar Gupta (PW-01) who received information the same on 26.02.2020, whereas Seizure Officer Gaurav Pandey (PW-02) was not working on the instructions of Roshan Kumar Gupta (PW-01) and on the same day, the case diary was prepared by Sandeep Kumar (PW-03). In this way, sending the report under Section 58 of the Act within 48 hours is also not certified. He further contended that statements of the panch witnesses recorded under Section 161 of CrPC vide Ex.P/15 are not related to the work done by the officers, rather they have been written as per the words given by the witnesses of the case, Ankit Gupta and Manish Rajhar and there is no evidence that either statements of Ankit Gupta and Manish Rajhar were recorded or been certified before the trial Court. He also contended that Section 55 of the Act was not followed and the property was changed : Investigation Officer, Gaurav Pandey (PW-02) and Malkhana Incharge of Police Station Chopra, Santosh Pandey (PW-06) both said that by putting the seal of Police Station Incharge Chopra on the seized property was not deposited in Malkhana on

19.02.2020 even though the sample packet was taken out by Dr.Ram Vijay Sharma, Executive Magistrate (PW-5). He lastly submitted that there is clear discrepancies about the bag in which contraband has been seized, the aforesaid contraband was not seized from the exclusive possession of the appellant and thus, the prosecution has failed prove their case beyond reasonable doubt and conviction of the appellant is contrary to the rule of prudence and in the light of evidence available on record, conviction of the appellant is bad in the eye of law.

22. It has been argued by Mr. Jameel Akhtar Lohani, learned counsel for appellant **Dharam Singh** in **CRA No.1989 of 2024** submits that the prosecution has failed to prove its case beyond reasonable doubt. The prosecution case vesting upon information provided by informer not authenticated under Section 65B of Evidence Act, which is not handwritten, but had been typed in computer and the officer to mention the name of person, who typed and is not been certified with certificate under Section 65B of Evidence Act, and the said evidence fails to prove that the appellant as author of / having been participated in crime. He further submits that there is material discrepancies and compliance of Section 41(2), 42, 55 and 57 of NDPS Act, which had not been complied as well as no investigation report been collected from the owner of the vehicle involved in the crime, even the Gazetted Officer after receiving information had not conducted the procedure neither he deputed any other Officer for

the investigation. He also submits that as per required procedure under Section 57 of the Act, report was not send to Mr. Nitin Agrawal but to S.O. PW-01 Roshan Kumar Gupta, whereas the Seizure Officer is by Gourav Pandey, who prepared its report on 20.02.2020 as per Section 3 & its report Section 57, the same was received by Roshan Kumar Gupta on 26.02.2020 and on the same day case diary was prepared by PW-3 and in that way, the report was not sent within 48 hours and also not been certified, which is completely non-compliance of Section 58 of the Act, Lastly, as per Exhibit P/15, 161 statement of Panchnama-witness are no way related to work done by Officer's and there is no evidence of Ankit Gupta and Manish Rajhar neither statement recorded nor been certified in the Court. The provision of Section was not been followed and the seized property been changed, the I.O., Gaurav Pandey fails to deposit the same in Malkhana on 19.02.2020, after collecting sample packet were taken out by Dr. Ram Vijay Sharma, Executive Magistrate and was sealed by making mark of DRI at Raipur and now from the place of seizure. He further submitted that the present appellant was only a driver and was working under the instruction of his owner, therefore, he may be acquitted from the alleged offence.

23. It has been argued by Mr. Punit Ruparel, learned counsel for appellant **Balwinder Singh in CRA No. 2282 of 2023** that the learned trial Court wrongly appreciated the evidence available on record and without finding any material against the appellant held

guilty for the alleged commission of offence. He further argued that the learned trial Court also failed to see that nothing has been recovered from the possession of the present appellant and only on the basis of the fact that the appellant is the registered owner of the vehicle, he has been arrayed as an accused and wrongly convicted him for the alleged commission of offence. The appellant has no knowledge regarding the transportation of ganja in his vehicle. He submitted that the prosecution has failed to prove its case beyond reasonable doubt. There are material omissions and contradictions in the evidence of prosecution witnesses which cannot be made basis to convict the appellant for the alleged offence. There are non-compliance of the mandatory provisions of Sections 42, 50, 52, 52-A, 55 and 57 of the NDPS Act. The independent witness have not supported the prosecution case. There are material irregularity in the search and seizure proceedings and there are major discrepancy in the evidence of the I.O. Therefore, he may be acquitted from the alleged offence.

24. On the other hand, Mr. Anumeh Shrivastava, learned counsel, appearing the respondent / DRI opposes the aforesaid submissions advanced by learned counsel for the respective appellants and submitted that the entire procedure as prescribed under the NDPS Act has been followed in its letter and spirit and after considering the evidence available on record, the learned trial Court has rightly convicted and sentenced the accused/

appellants for the alleged offence. The appellant Dharam Singh was driving the alleged truck bearing registration No. PB-12Q-7045, owned by appellant Balwinder Singh, from which a huge quantity i.e. approximately 837.970 kilogram of cannabis (ganja) was recovered and appellant - Ajay Pandey was sitting in Scorpio bearing registration No. CG-04JB-8237, driven by acquitted accused Ravi Shankar Mishra by which they both were piloting and showing the way to the alleged truck and appellant Ajay Pandey was regularly in contact with Dharam Singh, driver of the alleged truck while transporting the alleged cannabis. He further submitted that as all the mandatory provisions have been duly complied with, therefore, there is no irregularity or infirmity in the impugned judgment passed by learned trial Court so far as conviction of the appellants Dharam Singh, Ajay Pandey and Balwinder Singh is concerned, however, while acquitting the accused Ravi Shankar Mishra, the trial Court has committed grave illegality.

25. Mr. Shrivastava further submitted that though the learned trial Court in its judgment has accepted that Section 42, mandatory provisions of Section 50, 55 and 57 of the NDPS Act have been completely followed by the Investigation, but in spite of that the accused Ravi Shankar Mishra has been acquitted, which is prima facie liable to be quashed. He also submitted that though the trial Court has held that only on the basis of presence of accused Ravi Shankar Mishra, presumption of involvement in criminal

conspiracy for transporting of Cannabis (Ganja) cannot be drawn against him, but the trial Court has ruled out the fact that Ravi Shankar Mishra was the cousin of one of the main conspirator Ajay Pandey, who was responsible for the transportation of said illegal cannabis. Since Ravi Shankar Mishra was continuously accompanying Ajay Pandey from the time they departed from Uttar Pradesh till their apprehension at Champa in Mahendra Scorpio, which as escorting the truck carrying cannabis and during this period the planning, loading and transportation of the said cannabis took place, it seems unlikely that Ravi Shankar Mishra was not part of criminal conspiracy of transportation of cannabis.

26. We have heard learned counsel for the parties and perused the record of the trial Court with utmost circumspection.
27. No doubt, secrete information report Ex.P-1 is in computer typing and it has not come on record by whom and where it was got typed. But Roshan Kumar Gupta (PW-01) during his cross-examination has stated that secrete information has been received by him in the office through phone and said evidence has gone unrebutted, so it has been proved that Roshan Kumar Gupta (PW-01) has received secrete information telephonically and thereafter, either he typed the said report himself or got it typed from any other person.
28. Certificate under Section 65B of Indian Evidence Act, 1872 is required only to prove the information printed on a paper, stored, recorded or copied in optical or magnetic media, contained in an

electronic record. Section 2(t) of the Information Technology Act, 2000 defines electronic record, which means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche. In the present case, Roshan Kumar Gupta (PW-01) has either typed himself or got typed the report Ex.P-1 from other person and thereafter appended his signature. Therefore, secrete information report Ex.P-1 is an original complaint and not an electronic record, so to prove the said report, certificate under Section 65B of Indian Evidence Act is not required.

29. Admittedly, Roshan Kumar Gupta (PW-01) in paragraph 12 of his cross-examination has stated that they used to enter the correspondence (*daak*), either sent to or received from any other department in the register (*awak-jawak panji*) maintained in the office. But it is equally true that in para 11 of his cross-examination, he has stated that they don't maintain any record about secrete information received. So, non entering the said information in any register does not fatal the prosecution. Therefore, this point of argument raised by learned counsel for the appellants have no force.
30. Roshan Kumar Gupta (PW-01) has further stated that he produced the secrete information report Ex.P-1 before his senior officer Sh. Nitin Agrawal. Joint Director Sh. Nitin Agrawal, who appeared as (PW10) and in his sworn statement, he has duly supported the statement of Roshan Kumar Gupta (PW-01) about

receiving of secrete information. He has also stated that after receiving the said information, he has constituted a team for further proceedings vide letter Ex.P-11 and Sh. Gaurav Pandey was appointed seizure officer, in case of any seizure. Their statements are duly supported with letter/note Ex.P-11, by which a team of 09 members has been constituted for further proceedings.

31. As per Section 42 (2) of NDPS Act, “where an officer has taken down any information in writing and he has reason to believe that a search warrants or authorization can not be obtained without concealment of evidence or facility for escape of the offender, he should sent copy of such information within 72 hours to his immediate superior officer”. In the case in hand, Roshan Kumar Gupta (PW-01) has received the secrete information on dated 18.02.2020 at 10:05AM in his office at Raipur and delivered the same to his senior officer Joint Director Sh. Nitin Agrawal (PW-10) on the same date at 10.25AM, so as per Section 42 of NDPS Act, secrete information Ex.P-1 has been sent to immediate superior officer within stipulated period of 72 hours from receipt of said information. Therefore, **compliance of Section 42 of NDPS Act has been proved.**
32. Section 43 of the NDPS Act provides the powers of seizure and arrest in public place which towards 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.]

33. The facts of the case as well as evidence available in the case makes it clear that the vehicle was being stopped near Ghatoli Chowk (Champa) main road. While checking the vehicle, it was found contained with cannabis (*Ganja*). Admittedly it was being checked on the public place i.e. on the main road that too without any prior information and the said cannabis (*Ganja*) was seized

/recovered in transit which was being carrying by the accused persons on their vehicle. Therefore, the issue of non-compliance of Section 42 is not applicable in the present case and the police authority have acted under Section 43 of the NDPS Act. Section 43 of the NDPS Act, when the place of occurrence was a public road and accessibility to the public and fell within the ambit of the public place.

34. In view of the provisions of explanation to Section 43, the Section 42 of the NDPS had no application.
35. The contraband were recovered and seized while in transit. As the contraband were recovered and seized during transit in the Scorpio vehicle, as contemplated in Section 43(a) i.e. "Seize in any public place or in transit", this Court is of the considered opinion that Section 43 of the NDPS Act is applicable and as such, recording for reason for belief and for taking down of information received in writing with regard to the Commission of offence before conducting search and seizure, is not required to be complied with under Section 43 of NDPS Act.
36. In the matter of ***Firdoskhan Khurshidkhan vs. State of Gujarat and Another*** dated 30.04.2024 reported in ***2024 SCC OnLine SC 680*** has held in para 18 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."

37. In the matter of ***State of Haryana vs. Jarnail Singh and Others*** reported in **2004 (5) SCC 188** in Para 9 and 10 of its judgment the Hon'ble Supreme Court has held that:

"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."

38. In the matter of ***Kallu Khan vs. State of Rajasthan*** reported in ***2021 (19) SCC 197*** in Para 12, 13 and 16 of its judgment the Hon'ble Supreme Court has held that:

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.

39. The next submission of the learned counsel for the appellants that Section 50 of NDPS Act has also not been complied with as the right to the appellant about their search have not been informed by the police authority as provided under Section 50 of

the NDPS Act. The provisions of Section 50 is applicable to the present search of the accused persons whereas in the present case the cannabis (*Ganja*) was recovered from the vehicle belongs to the accused persons which cannot said to be his personal search. The search of a vehicle does not comes under the requirement of Section 50 of the NDPS Act and search of a person is distinguished from search of any vehicle etc.

In the matter of *Kallu Khan* (supra) the Hon'ble Supreme Court has also considered the applicability of Section 50 of NDPS Act in search of the vehicle. In Para 16, the Hon'ble Supreme Court has held that:

"16. Simultaneously, the arguments advanced by the appellant regarding non-compliance of Section 50 of NDPS Act is bereft of any merit because no recovery of contraband from the person of the accused has been made to which compliance of the provision of Section 50 NDPS Act has to follow mandatorily. In the present case, in the search of motor cycle at public place, the seizure of contraband was made, as revealed. Therefore, compliance of Section 50 does not attract in the present case. It is settled in the case of *Vijaysinh* (supra) that in the case of personal search only, the provisions of Section 50 of the Act is required to be complied with but not in the case of vehicle as in the present case, following the judgments of *Surinder Kumar* (supra) and *Baljinder Singh* (supra). Considering the facts of this Court, the argument of non-compliance of Section 50 of NDPS Act advanced by the counsel is hereby repelled."

40. In the matter of *State of Punjab vs. Baldev Singh* reported in

1999 (6) SCC 172 in Para 12 of its judgment the Hon'ble Supreme Court has held:

"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 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."

41. In the matter of ***Kulwinder Singh and Another vs. State of Punjab*** reported in **2015 (6) SCC 674** in Para 18 and 21 of its judgment the Hon'ble Supreme Court has held that:

18. In *Dharampal Singh v. State of Punjab*, it has been ruled that the expression "possession" is not capable of precise and complete logical definition of universal application in the context of all the statutes. Recently, in *Mohan Lal v. State of Rajasthan*¹¹, after referring to certain authorities, this Court has held as follows:-

"21. From the aforesaid exposition of law it is quite vivid that the term "possession" for the purpose of Section 18 of the NDPS Act could mean physical possession with animus, custody or dominion over the prohibited substance with animus or even exercise of dominion and control as a result of concealment. The animus and the mental intent which is the primary and significant element to show and establish possession. Further, personal knowledge as to the existence of the "chattel" i.e. the

illegal substance at a particular location or site, at a relevant time and the intention based upon the knowledge, would constitute the unique relationship and manifest possession. In such a situation, presence and existence of possession could be justified, for the intention is to exercise right over the substance or the chattel and to act as the owner to the exclusion of others.

22. In the case at hand, the appellant, we hold, had the requisite degree of control when, even if the said narcotic substance was not within his physical control at that moment. To give an example, a person can conceal prohibited narcotic substance in a property and move out thereafter. The said person because of necessary animus would be in possession of the said substance even if he is not, at the moment, in physical control. The situation cannot be viewed differently when a person conceals and hides the prohibited narcotic substance in a public space. In the second category of cases, the person would be in possession because he has the necessary animus and the intention to retain control and dominion."

21. In *State of H.P. v. Pawan Kumar*, it has been held that:

"10. We are not concerned here with the wide definition of the word "person", which in the legal world includes corporations, associations or body of individuals as factually in these type of cases search of their premises can be done and not of their person. Having regard to the scheme of the Act and the context in which it has been used in the section it naturally means a human being or a living individual unit and not an artificial person. The word has to be

understood in a broad common-sense manner and, therefore, not a naked or nude body of a human being but the manner in which a normal human being will move about in a civilised society. Therefore, the most appropriate meaning of the word “person” appears to be — “the body of a human being as presented to public view usually with its appropriate coverings and clothing”. In a civilised society appropriate coverings and clothings are considered absolutely essential and no sane human being comes in the gaze of others without appropriate coverings and clothings. The appropriate coverings will include footwear also as normally it is considered an essential article to be worn while moving outside one’s home. Such appropriate coverings or clothings or footwear, after being worn, move along with the human body without any appreciable or extra effort. Once worn, they would not normally get detached from the body of the human being unless some specific effort in that direction is made. For interpreting the provision, rare cases of some religious monks and sages, who, according to the tenets of their religious belief do not cover their body with clothings, are not to be taken notice of. Therefore, the work 'person' would mean a human being with appropriate coverings and clothings and also footwear.

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."

42. The next submission made by learned counsel for the appellant is that Section 52 of the NDPS Act as well as Circular of 1/89 issued by Central Government have not been complied with in the case for drawing of the samples from the seized articles. Therefore, there is substantial non-compliance of the mandatory provisions of the NDPS Act and the appellants are entitled for acquittal.

43. Recently 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 and 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.

44. In the present case the entire search and seizure proceedings have found genuine and the correct procedure have been drawn by the police persons. The independent witnesses have duly supported the prosecution case that when the vehicle was being stopped two persons were found sitting, they disclosed their names, on being checked the vehicle was contained with 157 packets in which cannabis (*Ganja*) was found which was found in their possession. The seizure of cannabis (*Ganja*) and its weight and sampling were proved by the Tahsildar/Executive Magistrate and nothing adverse could be found to disbelieve their evidences which further proves that the appellant was found in possession of such a huge quantity of cannabis (*Ganja*) in his vehicle. The appellant did not able to impute any palpable to make good his case that there has been non-compliance of any mandatory provisions of the NDPS Act.

The FSL report (Ex.P-33) further proves that the sample packets of cannabis (*Ganja*) which were drawn from the total quantity of cannabis (*Ganja*) were found to be contained with cannabis (*Ganja*) contents and further corroborates the allegation against the appellants.

45. Learned counsels for the accused persons would have argued that Ankit Gupta (PW-9) is planted witness of DRI as he was not

present on the spot and his signature are also not present on panchnama Ex.P-15. He was sent by the officers of CGST Korba for giving evidence before the Court. He has told recovery of more than 850 kilogram Ganja. He was declared hostile, but could not identify the accused by their names. His signatures appended on panchnama Ex.P-15 and on statement recorded in the Court are different. He could not identify Gaurav Pandey and Nitin Agrawal even in their photographs. His statement is contradictory to the facts mentioned in panchnama Ex.P-15 and he could not tell by whom the panchnama was prepared. Thus, statement of the witness is like a planted witness.

46. But the learned trial Court has not convinced with their points of arguments because, as discussed and held above, prosecution has successfully proved inclusion of Ankit Gupta (PW-09) and Manish Rajbhar in the raiding team. No doubt, he could not identify Gaurav Pandey and Nitin Agrawal with their photographs and accused persons with their respective names during his deposition, but only due to this reason he can not be considered as a planted witness because he had seen them only on the date of incident and his evidence has been recorded after more than two and a half year of such incident and after such a long period non recognition of accused persons and officers by him, particularly when he don't know them personally, is quite normal. There are 11 signatures of Ankit Gupta (PW-09) over deposition-sheet and apparently there is some difference *interse*

in those signatures, so his signature appended on panchnama Ex.P-15 can not be doubted, even if some difference is found with the signatures appended over deposition-sheet. Therefore, presence of this witness on the spot at the time of proceedings of this case is proved beyond doubt.

47. Intelligence officer Gaurav Pandey (PW-02) has further stated that after inclusion of above name independent witnesses, they went approximately 200 meters away from Ghatoli Chowk towards Prakash Industries and started to wait for aforesaid vehicle. After a short period, a white colour Scorpio bearing registration No. UP-70DN-2656 reached there. There were two persons in the said vehicle, who disclosed their name as Ajay Pandey and Ravi Shanker Mishra when got stopped and asked by him. Ravi Shanker Mishra was driver of said vehicle. After 5-10 minutes, a Truck bearing registration No. PB-12Q-7045, driven by Dharam Singh reached there. Gaurav Pandey (PW-02) is duly supported by Vaibhav Ojha PW-4, Pawan Kumar Dongare PW-8, independent witness Ankit Gupta PW-9 and Nitin Agrawal PW-10 as they have uttered almost same facts as narrated by him.

48. Intelligence officer Gaurav Pandey PW-02 has further stated that they checked the aforesaid Truck and found that the thickness of floor of trailer (open back portion of Truck) comparatively higher than normal, so they removed the iron sheet from back portion, fixed above the rear tyres, and found cannabis like substance in trays kept in open place (i.e. place between two floors of back

portion). Accused persons were asked about the substance than they disclosed it as cannabis. Thereafter, they brought the accused persons and vehicles in police station, Champa as there was danger to life. He is duly supported by Vaibhav Ojha PW-4, Pawan Kumar Dongare PW-8 and Nitin Agrawal PW-10 as they have uttered almost same facts as narrated by him.

49. Learned counsels for the accused persons would have argued that secrete information Ex.P-1 was in respect of a Truck, but the vehicle got stopped by the team is a Trailer, so story of prosecution is doubtful. But this Court is not convinced with this point of argument because aforesaid secrete information Ex.P-1 was based on the information provided by informer and Trailer was found in place of Truck on spot when got stopped by raiding party. Moreover, registration number of the vehicle in secrete information is same as of registration number of vehicle got stopped on spot. Accused persons during cross-examination of any witness have nowhere suggested that the vehicle got stopped by raiding party was not having registration No. PB-12Q-7045. So, mere difference in description of vehicle i.e. Truck and Trailer does not make any difference.
50. Learned counsels for the accused persons would have also argued that officers of DRI have neither prepared panchnama about the proceedings of Ghatoli Chowk nor prepared site-plan of said place nor seized documents of vehicle and driving licence of Dharam Singh at Ghatoli Chowk not given notice under Section

50 of NDPS Act to accused persons nor recorded the statements of accused persons nor given any notice for search of vehicle at Ghatoli Chowk, so the proceedings are suspicious. The learned trial Court has not convinced with these points of argument too because during cross-examination of Gaurav Pandey PW2, accused persons have suggested that on the date of incident the aforesaid vehicle was parked unclaimed in the parking at Ghatoli Chowk, Champa and accused Dharam Singh, who has been reached at Ghatoli Chowk in other vehicle was walking there after parking his vehicle at Ghatoli Chowk and then he was arrested under impression of driver of seized vehicle. The suggestions put by learned defence counsels itself prove all the proceedings taken place at Gatoli Chowk.

51. Hon'ble Supreme Court in case ***Balu Sudam Khalde vs The State Of Maharashtra, Criminal Appeal No. 1910 of 2010, decided on 29.03.2023*** has observed, "that the suggestion made by the defence counsel to a witness in the cross-examination if found to be incriminating in nature in any manner would definitely bind the accused and the accused cannot get away on the plea that his counsel had no implied authority to make suggestions in the nature of admissions against his client." Therefore, the suggestions put by learned defence counsels itself prove that the vehicle bearing registration No. PB-12Q-7045 was taken into possession and accused Dharam Singh was apprehended at Ghatoli Chowk by officers of complainant. So,

non preparation of panchnama, site-plan, non seizure of documents, not giving notice etc. at Gatoli Chowk does not fatal the present case.

52. Seizure Officer/ Investigating officer of this case Gaurav Pandey PW-2 has further stated that vehicle Truck bearing registration No. PB-12Q-7045 was searched in police station, Champa and during search 9 trays were found in the back portion of said vehicle, out of which 8 trays were filled with cannabis packets and 1 was empty. Some packets were also found in tool- box of said truck. One packet was opened first and tested with the help of "Narcotics Detection Kit". In the said test, cannabis in packet was confirmed, so all 157 packets were cut and tested with aforesaid kit. On testing, cannabis was found in all those 157 packets. Thereafter, weight of each packet was done and on weighment weight of each packet was found above 5 kilogram and total weight of all 157 packets was found 837.97 Kilogram. Tape was pasted on the cuts of all packets and marked with "P-1" to "P-157". The aforesaid witness was cross-examined at length, but accused persons have neither questioned the recovery of 157 packets of cannabis nor total quantity of 837.97 Kilogram cannabis in those packets as there is neither any cross-examination nor any suggestion about those facts, so it safe to infer that they have admitted the recovery of total 837.97 Kilogram cannabis from the said Truck on the basis of law settled by Hon'ble Supreme Court in *Vinod Kumar's* case (supra).

53. Vaibhav Ojza PW-4, Pawan Kumar Dongre PW-8 and Nitin Agrawal PW-10 have duly supported Gaurav Pandey PW-2 as they have also stated that about recovery of total 837.97 Kilogram cannabis in 157 packets from trays kept in cavities made in said truck and their evidence has also gone unrebutted for want of cross-examination and suggestions.
54. No doubt, independent witness Ankit Gupta PW-9 has stated that probably 156 packets or more has been recovered from the said Truck and total weight of cannabis was more than 850 kilogram, but it is equally true that the witness had no interest in litigation and he had become witness only on request of officers of DRI, so it cannot be expected that he would memorize each and every minute details of this case. Moreover, recovery of total 837.97 Kilogram cannabis in 157 packets from said truck has been proved by other witnesses and said recovery has not been disputed by accused persons during cross-examination of those witnesses, so because of statement of witness Ankit Gupta PW9 recovery cannot be doubted. Therefore, this Court has no hesitation to hold that prosecution has successfully **proved beyond doubt recovery of total 837.97 Kilogram cannabis in total 157 packets from truck** bearing registration No. PB-12Q-7045 at the time of raid.
55. Now the question arises as to whether accused Dharam Singh was driving the said vehicle bearing registration No. PB-12Q-7045 at the time of raid.

56. As per case of prosecution, accused Dharam Singh was caught red handed while driving the said truck with 837.97 Kilogram cannabis in total. On the other hand, learned defence counsel contended that accused Dharam Singh has not been driving the said vehicle and he has been falsely implicated in this case'
57. Accused Dharam Singh was examined under Section 313 of Cr.P.C. and during his examination question No. 20 was put to him about driving of Truck bearing registration No. PB-12Q-7045. In response of the said question, he has simply replied " ekywe ugh". The aforesaid reply given by accused Dharam Singh itself compels this Court to infer that he was driving the aforesaid vehicle at the time of raid because if he would not have been driving the said vehicle than obviously he would have given some explanation about place and manner of his arrest. Therefore, prosecution has proved beyond doubt that **accused Dharam Singh was carrying/transporting total 837.970 kilogram cannabis (Ganja) in vehicle bearing registration No. PB-12Q-7045** at the time of raid.
58. No doubt, S.H.O. of police station, Champa has not affixed his seal on the seized cannabis prior to deposition it in malkhana, but only due this reason accused persons can not be benefited because the purpose of said seal is only for taking of sufficient safeguards to protect the seized property in the interests of the arrested persons. In the case in hand, there is not any iota of evidence which can show that sealed packets of cannabis were ever taken out from

malkhana prior to physical verification. Tehsildar Ramvijay Sharma Pw5 has also stated that seal of DRI was intact on sealed packets of cannabis, which proves that packets were kept sealed in malkhana. So, lack of seal of S.H.O. only does not fatal to prosecution.

59. Intelligence officer Gaurav Pandey PW2 has further stated that on dated 19.02.2020, he has written a letter Ex.P-26 to Tehsildar (also exercising power of Executive Magistrate in Chhattisgarh) for physical verification of seized cannabis and also written a letter Ex.P-27 to malkhana in-charge of P.S. Champa for taking out the samples from malkhana. On such letter, Tehsildar removed the seal of seized packets and taken photographs of cannabis and truck, which are Article-1 to 9. Thereafter, Tehsildar took two samples of 30 grams each from each packet under Section 52A of NDPS Act and in this respect prepared inventory Ex.P-28. Tehsildar sealed the packets of remaining cannabis and each sample. Samples were marked with P1-S1 to P-157-S1 and other samples were marked with P1-S2 to P157-S2. In this respect inventory Ex.P-29 was prepared. Santosh Pandey Pw6 has duly supported him as he has also stated that on dated 18.02.2020, on the basis of letter of Gaurav Pandey Ex.P-27, he has taken out the cannabis from malkhana and after physical verification keep them in malkhana on the basis of letter Ex.P-30.
60. Tehsildar Dr. Ram Vijay Sharma has appeared as PW5 and in his sworn statement he has stated that on dated 19.02.2020, he has received letter Ex.P-27 for physical verification of

recovered cannabis and in response of said letter he had gone to police station Champa and done physical verification. On weighing, weight of cannabis was found 837.970 kilogram. Photographs of proceedings were taken, which are Article-1 to 9. He has taken two samples of 30 grams each from each packet and first samples were marked with P1-S1 to P- 157-S1 and other samples were marked with P1-S2 to P157-S2 and sealed with seal of his office. He has prepared inventory and given certificate Ex.P-28A.

61. On simple reading of provisions of Section 52A (2) of the NDPS Act, it is clear that the aforesaid provisions provide for the procedure and manner of seizing, preparing the inventory of the seized material, forwarding the seized material and getting inventory certified by the Magistrate concerned. It further provides that the inventory or the photographs of the seized substance or any list of the samples in connection thereof on being certified by the Magistrate. It means, Magistrate has either to certify the correctness of the inventory or certify photographs taken in his presence as true or allow to draw representative samples of such drugs in his presence and certify the correctness of list of samples.
62. In the case in hand, Magistrate-cum-Tehsildar PW5 has done weighing of cannabis, taken photographs Article-1 to 9 and certified the correctness of the inventory Ex.P-28 by certificate Ex.P-28A. Only certificate Ex.P-28A about the correctness of the

inventory makes the compliance of Section 52A. So, point of argument raised by learned counsel for accused persons in this regard that proceedings of Section 52A of NDPS Act are concocted, Executive Magistrate Ram Vijay Sharma PW5 has not taken the photographs of opened packets, samples have not been taken by Gaurav Pandey, samples have not been taken before accused persons etc. have no force. Therefore, prosecution has successfully **proved compliance of Section 52A of NDPS Act.**

63. As per Section 52 (1) of NDPS Act, "Any officer arresting a person under section 41, section 42, section 43 or section 44 shall, as soon as may be, inform him of the ground for such arrest."
64. In the case in hand, Gaurav Pandey PW2 has stated that on dated 19.02.2020, he has arrested accused Ajay Pandey, Ravi Shanker and Dharam Singh vide arrest memo Ex.P-17 to Ex.P-19 respectively and inform them about ground of their arrest. Sandeep Kumar PW3 has stated that on dated 16.07.2020, he has arrested accused Balwinder vide arrest memo Ex.P-62. As per the aforesaid memos, reasons of arrest are also disclosed to to above named accused persons. Moreover, the aforesaid witnesses were cross-examined at length, but accused have not disputed the aforesaid facts during cross-examination, so it is safe to infer that they have admitted the facts as correct. Therefore, prosecution has **proved the compliance of Section**

52 (1) of NDPS Act. Even otherwise, compliance of Section 52 (1) of NDPS Act is not mandatory and directory in nature as held by Hon'ble Supreme Court again in case ***Gurubax Singh versus State of Haryana, AIR 2001 SC 1002.***

65. Gaurav Pandey PW2 has further stated that he has informed his senior officer Sh. Roshan Kumar Gupta under Section 57 of NDPS Act vide report Ex.P-3. The report Ex.P-3 dated 20.02.2020 has been received by Roshan Kumar Gupta on dated 26.02.2020 as it bears his signature and seal. Learned counsel for the appellants would have argued that compliance of Section 57 is not as per law as it has not been sent within 48 hours of proceedings.
66. No doubt, report under Section 57 of NDPS has been sent almost 6 days after the proceedings, but it does not fatal the prosecution and gives no benefit to accused persons because Hon'ble Supreme Court in case ***State of Punjab versus Balbir Singh, AIR 1994 SC 1872*** has held that provision of Section 57 of NDPS Act are not mandatory. Hon'ble Supreme Court again in case ***Gurubax Singh versus State of Haryana, AIR 2001 SC 1002*** has held, provisions of Sections 52 and 57 are directory in nature and violation of these provisions would not ipso facto violate the trial or conviction. Therefore, this Court is not convinced by the point of argument raised by learned counsel for the appellants in this respect.

67. Hon'ble Supreme Court in case ***Tofan Singh versus State of Tamil Nadu, Criminal Appeal No. 152 of 2013, decided on 29 October, 2020*** has held, "There can be no doubt that the mandatory provisions of the NDPS Act to ensure fair trial of the accused must be enforced. However, over-emphasis on the principles of natural justice in drug- trafficking cases can be a major hindrance to the apprehension of offenders. In offences under the NDPS Act, substantial compliance should be treated as sufficient for the procedural requirements, because such offences adversely affect the entire society. The lives of thousands of persons get ruined." Therefore, if for the sake of argument it is assumed that there is any defect in compliance of provisions of NDPS Act, even then the Court finds the compliance made by prosecution in this case are sufficient for the procedural requirements.
68. Hon'ble Supreme Court in case ***Mohan Lal vs State of Rajasthan, Criminal Appeal No. 1393 of 2010, decided on 17 April, 2015*** has observed, "The law, in general, recognizes two kinds of possession: actual possession and constructive possession. A person who knowingly has direct physical control over a thing, at a given time, is then in actual possession of it. A person who, although not in actual possession, knowingly has both the power and the intention at given time to exercise dominion or control over a thing, either directly or through another person or persons, is then in constructive possession of it".

69. In the case in hand, as discussed and held above, prosecution has successfully proved recovery of 837.970 kilogram Ganja from accused Ajay Pandey, Balwinder Singh and Dharam Singh beyond shadow of doubt. Hon'ble Supreme Court in case ***Union of India through Narcotics Control Bureau, Lucknow versus Md. Nawa Khan, Criminal Appeal No. 1043 of 2021, decided on 22 September, 2021*** has held, "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 the 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." The accused has not rebutted the said presumption, either by way of cross-examination of prosecution's witnesses or by producing any evidence, so presumption under Section 35 as well as Section 54 of NDPS Act is drawn against aforesaid accused persons.
70. It has been further argued by learned counsel for the appellants that property has been changed as Dr. Ram Vijay Sharm PW5 has stated that the seal used by him was of C.G. Champa and not used the seal brought by DRI. Seal of his office is either of Executive Magistrate Champa or Tehsildar Champa. But as per report of Govt. Opium & Alkaloid Factories, Neemuch, there was seal of State Election Commission Madhya Pradesh, which

shows that after obtaining signature of Executive Magistrate Champa over Test memo, officers of DRI put its seal either in Raipur office of Indore office and sent the other property for examination, so FSL report is not related to this case.

71. Intelligence officer Gaurav Pandey PW2 in para No. 16 of his statement has stated that under proceedings under Section 52(A) of NDPS Act, Tehsildar Champa has taken two samples of 30 gram each from each packet. Tehsildar sealed the sample packets. Sample packets were marked with P1-S1 to P157-S1 and other samples were marked with P1-S2 to P157-S2. In this respect inventory Ex.P-28 was prepared. Tehsildar Ramvijay Sharma Pw5 has duly supported him as he has also stated that on dated 19.02.2020, he has taken two samples of 30 gram each from each packet and marked with P1-S1 to P157-S1 and other samples were marked with P1-S2 to P157-S2. He has sealed the sample packets with the seal of his office. Thereafter, inventory was prepared and in this respect he has issued certificate Ex.P-28A. None of aforesaid witness has stated that about sample/mark of seal used for sealing the samples and recovered substance.
72. No doubt, Tehsildar Ramvijay Sharma PW5 during his cross-examination has admitted that seal of his office is either of Executive Magistrate Champa or Tehsildar Champa and seal used by him was of Chhattisgarh Champa and not of any other place. But in his examination-in-chief, he has categorically

stated that he has issued the certificate dated 19.02.2020 Ex.P-28A after preparation of inventory. As per column No.5 "*Sealband karne ka tarika*" of inventory dated 19.02.2020 Ex.P-28, round seal of Rajya Nirvachan Aayog, Madhya Pradesh (**Ra. Ni. Aa. M.P.**) is appended on each page. If Tehsildar-cum-Executive Magistrate has certified the inventory Ex.P-28 as correct vide his certificate Ex.P-28A after its preparation than it has been automatically proved that seal of Executive Magistrate Champa or Tehsildar Champa was not used and round seal of Rajya Nirvachan Aayog, Madhya Pradesh was used for sealing the samples and remaining cannabis. Therefore, it can not say that seal of samples has been tempered or samples sent for examination were changed.

73. Further, Chhattisgarh State was the part of joint Madhya Pradesh State. In Madhya Pradesh and now also in Chhattisgarh, Tehsildar also exercises power of Election Officer, so use of old seal by him for sealing the samples can not be ruled out. Further more, DRI department is under Central Government and not the department of any State Government, so use of seal of department of Madhya Pradesh State Government was not possible for it. In such a situation, it can be safely presumed that Tehsildar would have either forgotten the mark of seal used or he would have deposed intentionally to favour the accused persons. Therefore, on the basis of erroneous statement of Tehsildar, it can not say that samples of substance recovered in this case has not been sent for

examination.

74. Now the next question arises as to whether the accused Ajay Pandey, Ravi Shanker Mishra and Balwinder Singh have abated the accused Dharam Singh or were the party to a criminal conspiracy for commission of aforesaid offence.
75. In the case in hand, the conversations between accused Ajay Pandey, accused Dharam Singh and accused Balwinder Singh telephonically have been proved. It has not come on record that all the above named persons were in touch for any other purpose, so their conversations themselves prove their meeting of minds prior to commission of offence for transporting of huge quantity of cannabis because if they would not have such conspiracy than obviously they had no need to talk with each other for several days continuously, particularly when they are not related with each other in any manner. Further, once their prior meeting of minds has been established by prosecution than there is presumption under Section 35 of NDPS Act in its favour, so it was obligatory upon accused to explain the reason and purpose of their conversations with each other prior to date of raid, if it was not for conspiracy about transporting cannabis in truck bearing registration No. PB-12Q-7045, but they have given no such explanation, so adverse inference is drawn against them.
76. Further more, Sandeep Kumar (PW-3) has stated that he had written a letter Ex.P-49 and reminder Ex.P-50 to RTO office

Gurdaspur for providing information about truck bearing registration No. PB-12Q-7045 and in response of said letters, RTO office, Gurdaspur has given information Ex.P-51, according to which accused Balwinder Singh is the registered owner of said vehicle. Even otherwise, ownership of accused Balwinder Singh over truck bearing registration No. PB-12Q-7045, in which cannabis was found, has not been disputed by accused either in oral argument or in written argument, so it is safe to infer that he has admitted ownership of accused Balwinder Singh over said truck.

77. No doubt, Sandeep Kumar PW3 has stated that on dated 15.07.2020, he has searched the house of accused Balwinder Singh at Tatibandh, Raipur and at that time truck bearing registration No. PB-12Q-7045 was found parked near his house and in this respect panchnama Ex.P-10 was prepared by him. But during cross-examination, he has also stated that registration certificate of vehicle No. CG-04JB-8237 has been produced in this case (attached with document Ex.P-60). As per the said registration certificate, accused Balwinder Singh is also registered owner of truck bearing registration No. CG-04JB-8237. It has not come on record that accused Balwinder Singh has sold out the said vehicle or was not in his possession on the date of raid. So, it has been proved that both the trucks bearing registration number CG-04JB-8237 and PB-12Q-7045 were owned by accused Balwinder Singh at the time of raid.

78. Further, now a days the persons involved in smuggling of huge quantity of narcotic substance have a modus-operandi of keeping two vehicle of same type and use one vehicle with number plate of other vehicle, so that in case of apprehending during transporting the narcotic substance, they may get involve the other vehicle of original registration number in some other petty offence and later on during trial of NDPS case may get the defence of involvement of said vehicle in other case. In the present case, accused Balwinder Singh is the registered owner of truck bearing registration No. CG-04JB-8237 as proved by registration certificate attached with Ex.P-60 and also owner of truck bearing registration No. PB-12Q-7045 as proved by Ex.P-51. Out of these two vehicles, one was found near his house and whereabouts of other truck was only in his personal knowledge, so as per Section 106 of Indian Evidence Act, obligation was upon him to explain the said fact, but he has given no explanation about his other truck, therefore, it can be safely inferred that either accused Balwinder has changed the number plate of vehicle CG-04JB-8237, parked near his house with number plate of vehicle PB-12Q-7045 or has been provided his truck bearing registration No. CG-04JB-8237 with number plate PB-12Q-7045 for transporting the cannabis under conspiracy. Therefore, ownership of Balwinder Singh over truck seized on spot with cannabis has also been proved.
79. Further more, in the seized truck, there were several cavities

made after modification of back portion/floor of said truck and packets of cannabis have been found in the trays kept in those cavities. Modification in the base/floor of truck and making secrete cavities and trays for keeping cannabis can only be made by owner of vehicle and not by any other person. So, modification in vehicle for transporting cannabis secretly also proves the involvement of accused Balwinder Singh in criminal conspiracy.

80. As discussed above, accused Ravi Shanker Mishra was driving the vehicle Scorpio bearing registration No. UP- 70DN-2656 and accused Ajay Pandey was sat in the said vehicle. Admittedly, cannabis has neither been recovered from personal search of accused Ravi Shanker Mishra nor from said Scorpio, so question before this Court arises as to whether accused Ravi Shanker Mishra was also members of criminal conspiracy with other accused persons for transporting huge quantity of cannabis in the seized truck.
81. In this case, the learned trial Court has scrutinized and evaluated the evidence produced by the prosecution minutely to find out the role of accused Ravi Shanker Mishra in commission of crime, but any iota of evidence on the case file was not found which can establish meeting of mind of accused Ravi Shanker Mishra with other above named accused prior to the date of raid because in all the aforesaid call statements there is no detail about conversation of accused Ravi Shanker Mishra with other accused persons. There is also not any evidence which can prove that prior to the

date of raid, accused Ravi Shanker Mishra have ever met physically with accused Dharam Singh or Balwinder Singh. In other words, beside the presence of accused Ravi Shanker Mishra with accused Ajay Pandey in the Scorpio bearing registration No. UP-70DN-2656, there is no direct or indirect evidence about his involvement in the crime.

82. Hon'ble Supreme Court in case *Ismailkhan Aiyubkhan Pathan versus State of Gujrat, Crl. Appeal No.1704 of 1996, decided on 14.09.1999* has observed, "There is no statutory provision for drawing any presumption that a person who was present at any particular place shall be presumed to be in possession of the narcotic or psychotropic substance. No presumption under law can be drawn even under S.114 of the Evidence Act merely because these persons were present when PW-7 went there." Therefore, only on the basis of presence of accused Ravi Shanker Mishra, presumption about his involvement in a criminal conspiracy for transporting the cannabis can not be drawn against him.
83. Therefore, on the basis of aforesaid discussion at length, this Court has no hesitation to hold that prosecution has successfully proved that **accused Balwinder Singh knowingly provided his alleged truck for commission of crime** and also proved that **accused Dharam Singh under conspiracy with accused Ajay Pandey and Balwinder Singh was transporting total 837.97 Kilogram cannabis in the seized truck** and accused **Ajay Pandey** was guiding him in the Scorpio bearing registration No. UP-70DN-2656.

84. In view of the above discussion, this Court is of the considered opinion that the judgment passed by learned trial Court is based on proper appreciation of evidence which is neither perverse nor contrary to the record as well as law laid down by the Hon'ble Supreme Court and the same needs no interference as such the judgment of conviction and order of sentence awarded to the appellants **Dharam Singh, Ajay Pandey and Balwinder Singh** is hereby affirmed.
85. In the result, the **CRA Nos. 2234 / 2023, CRA No. 1989 of 2024 and CRA No. 2282 of 2023** are hereby **dismissed**. The appellants **Ajay Pandey, Dharam Singh and Balwinder Singh** are reported to be in jail. They shall serve the remaining period of jail sentence as has been awarded to them by the learned trial Court.
86. Further, taking into consideration the findings recorded by the learned trial Court, while acquitting the accused/respondent Ravi Shankar Mishra from aforesaid offences, we do not find any reason to allow CRMP No. 1980 of 2024, seeking grant of leave to appeal.
87. Recently, applying the law governing the scope of interference in an appeal against acquittal, the Hon'ble Supreme Court in the case of **"State of Rajasthan Vs. Kistoora Ram"** reported in **2022 SCC OnLine SC 984**, has held as follows:-

"8. The scope of interference in an appeal against

acquittal is very limited. Unless it is found that the view taken by the Court is impossible or perverse, it is not permissible to interfere with the finding of acquittal. Equally if two views are possible, it is not permissible to set aside an order of acquittal, merely because the Appellate Court finds the way of conviction to be more probable. The interference would be warranted only if the view taken is not possible at all."

88. Thus, for the foregoing reasons, the CRMP No. 1989 of 2024, seeking for leave to appeal being totally devoid of merits, is **rejected**. Consequently, the appeal also stands **dismissed**.
89. Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the appellants are undergoing their jail sentence to serve the same on the appellants informing them that they are at liberty to assail the present judgment passed by this Court by preferring an appeal before the Hon'ble Supreme Court with the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee.
90. Let a copy of this judgment and the original records be transmitted to the trial Court concerned forthwith for necessary information and compliance.

Sd/-
(Bibhu Datta Guru)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

Head – Note

In cases of organized crime, where a criminal conspiracy is hatched for the transportation of substantial quantity of contraband, and the same is established through clinching evidence, failure on the part of the accused to provide explanation would prove fatal to their defence.