



2025:CGHC:55981

AFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**Judgment Reserved on 28.10.2025**

**Judgment delivered on 18.11.2025**

**CRA No. 26 of 2023**

Vijay Kumar Vishwakarma S/o Dashrath Kumar Vishwakarma Aged About 42 Years R/o Village Relmajra, P.S. Balasor, District Namashahar Bhagatsingh Nagar, Punjab

**... Appellant**

**versus**

State Of Chhattisgarh Through Station House Officer, Police Station Nagarnar, District : Bastar(Jagdalpur), Chhattisgarh

**... Respondent**

**{Cause title, as taken from Case Information System}**

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For Appellant : Mr. Rishi Rahul Soni, Advocate.

For Respondent : Mr. Shailesh Kumar Puriya, Panel Lawyer.

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**(Hon'ble Mr. Justice Naresh Kumar Chandravanshi)**  
**CAV Judgment**

1. The present appeal has been preferred by the appellant under Section 374 (2) of the Criminal Procedure Code, 1973 against the impugned judgment of conviction and order of sentence dated 01.12.2022 passed by learned Special Judge (NDPS) Act, Jagdalpur, District Bastar in Special Criminal Case (NDPS Act) No. 10/2021, whereby appellant has been convicted under Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (henceforth, 'NDPS Act') and sentenced to undergo rigorous imprisonment for 10 years with fine of

Rs.1,00,000/-, in default of payment of fine, to further undergo additional rigorous imprisonment for one year.

2. Case of the prosecution, in brief, is that on 24.08.2020, Assistant Sub-Inspector – Harwan Singh (P.W. 9) of Police Station Nagarnar received information from an informant that a twelve-wheeler Truck bearing registration No. R.J. 09/G.D./2253 is transporting contraband substance *Ganja* illegally from Odisa to Jagdalpur unauthorizedly for sale. The said secret information was recorded in *rojnamcha sanha*. The intimation about secret information was sent to Senior Officers. Two independent witnesses were called. Necessary Rojnamcha Sanhas and Mukhbir suchna panchnama were prepared. Above information was sent to City Superintendent of Police, Jagdalpur. Subsequently, police party proceeded towards the place of occurrence and cordoned off at NH 63, PS Nagarnar, where they intercepted the said 12 wheeler Truck. The driver of the said truck namely Vijay Kumar Vishwakarma, appellant herein was served the notice under Section 50 of the N.D.P.S. Act. After preparing necessary Panchnamas, they searched the aforesaid vehicle and found contraband in 20 bundles wrapped in Brown sellotape kept in *Dala* of the truck, which was recovered vide Ex. P-7. The said contraband substance was identified as *Ganja* by burning, smelling and rubbing, to which identification Pachnama Ex. P-8 was prepared. On being weighed, it was found that each bundle, out of 20 bundles, contained 10 kg *Ganja*, total 200 kg. The recovered *Ganja* was homogenized and kept in 8 plastic sacks (Bori) and Samras Panchnama Ex. P-11 was prepared. *Ganja* kept in 20 bundles wrapped in Brown Sellotape, each bundle containing 10 kg,

12 wheeler truck, Rs. 2500/- and one MI brand Android Phone were seized vide seizure memo Ex. P-12. The accused/appellant was arrested. Spot maps were prepared by the police and the Patwari. Dehati Nalisi (Ex. P-32) about entire proceeding was recorded and then FIR Ex. P-33 was registered. The contraband substance was handed over to Malkhana Muharrir vide receipt Ex. P-42. Two samples of 50 gm each were collected in two containers marked as 'A-1' & 'A-2' by the Executive Magistrate vide Ex. P-47 (4 pages). He also prepared inventory of seized articles. One sample marked as 'A-1' was sent to the FSL, Jagdalpur vide Ex. P-43, to which, vide its report Ex. P-44, the FSL reported that sample 'A-1' is 'Ganja'.

3. After completion of usual investigation, a charge-sheet was filed before the learned Special Court for the offence under Section 20(b)(ii)(C) of the NDPS Act.
4. Learned Special Judge framed charge against the appellant/accused under Section 20(b)(ii)(C) of the NDPS Act. He denied the said charge and claimed trial.
5. In order to establish the charge against the appellant, the prosecution has examined following witnesses and exhibited following documents :-

#### **WITNESSES**

PW 1	Baidyanath Baghel	P.W. 6	Ku. Shushma Rana
PW 2	Aseet John	P.W. 7	Harish Korram
PW 3	Satyanarayan Goyal	P.W. 8	Shiv Shankar Gendle
PW 4	Devendra Singh Thakur	P.W. 9	Harwan Singh, IO
PW 5	Lalit Baghel	P.W. 10	S.K. Banjara

## EXHIBITS

1.	Ex. P-1	Notice u/S. 160 Cr.P.C.	28.	Ex. P-28	Duty certificate
2.	Ex. P-2	Consent of witness	29.	Ex. P-29C	Rajnamcha Sanha
3.	Ex. P-3	Notice u/S. 50, NDPS Act.	30.	Ex. P-30C	Rajnamcha Sanha
4.	Ex. P-4	Search panchnama	31.	Ex. P-31	Information to SP, Jagdalpur
5.	Ex. P-5	Search memo of govt. vehicle	32.	Ex. P-32	Dehati Nalsi
6.	Ex. P-6	Search memo truck	33.	Ex. P-33	FIR
7.	Ex. P-7	Recovery memo	34.	Ex. P-34	Memo regarding seizure of Truck
8.	Ex. P-8	Madak Drivya Pahchan Panchnama	35.	Ex. P-35C	Rojnamcha Sanha
9.	Ex. P-9	Weight machine verification Panchnama	36.	Ex. P-36A	Rojnamcha Sanha
10.	Ex. P-10	Taul Panchnama	37.	Ex. P-37C	Rojnamcha Sanha
11.	Ex. P-11	Samras Panchnama	38.	Ex. P-38	Memo requesting for presence of Executive Magistrate
12.	Ex. P-12	Seizure memo of Ganja, truck, Rs. 2500/- and a mobile	39.	Ex. P-39	Notice u/S. 67, NDPS Act
13.	Ex. P-13	Sample Seal Panchnama	40.	Ex. P-40	Information of arrest
14.	Ex. P-14	Memo showing reason of arrest	41.	Ex. P-41	Memo for preparing Patwari Naksha
15.	Ex. P-15	Arrest memo	42.	Ex. P-42	Receipt of Malkhana Muharrir
16.	Ex. P-16	Spot map	43.	Ex. P-43	Memo to FSL
17.	Ex. P-17	Panchnama	44.	Ex. P-44	FSL report
18.	Ex. P-18	Notice u/S. 160, CrPC	45.	Ex. P-45	FSL receipt

19.	Ex. P-19	Consent of witness	46.	Ex. P-46	Memo seeking permission for sampling and pre-trial proceeding.
20.	Ex. P-20	Amad	47.	Ex. P-47	Document regarding inventory proceeding
21.	Ex. P-21	Duty certificate	48.	Ex. P-47 repeat	Inventory
22.	Ex. P-22	Patwari spot map	49.	Ex. P-47 repeat	Certificate regarding weighing machine
23.	Ex. P-23	Memo preparation of Patwari spot map	50.	Ex. 47 repeat	Verification of sample seal
24.	Ex. P-24	Mukhbir Suchna Panchnama	51.	Ex. P-48	Form 24, MV register
25.	Ex. P-25	Information regarding crime	52.	Ex. P-49	Certificate of Gram Panchayat
26.	Ex. P-26	Panchnama of not obtaining search warrant	53.	Ex. P-50C	Jabt Mal ka register
27.	Ex. P-27	Rojnamcha Sanha			

Statement of the appellant was also recorded under section 313 of Cr.P.C., in which, he denied the circumstances appearing against him and stated that he is innocent and has been falsely implicated in the case. No defence witness has been examined by the appellant in his defence.

6. After appreciation of the evidence adduced by the prosecution, the Special court has convicted the appellant and sentenced him as mentioned in opening paragraph of this judgment. Hence, this appeal.
7. Learned counsel appearing for the appellant submits that in the instant case, 200 kgs. of contraband substance *Ganja* was said to be seized

from the Truck driven by appellant, which was kept in 20 bundles (गट्टा), each containing 10 kgs. He further submits that as per deposition of Investigating Officer (PW-9) and *Samras* Panchnama (Ex.P-11), after recovery of said contraband substance, it was homogenized and, thereafter, the contraband substance was kept in 8 white coloured plastic sacks. It is next contended that Malkhana Moharrir - S.K. Banjara (PW-10) has proved malkhana receipt (Ex.P-42) signed by him and Harwan Singh (PW-9), Investigating Officer has proved Malkhana Register (Ex. P-50C), but neither in Malkhana receipt (Ex. P-42) nor in Malkhana register (Ex.P-50C), it has been mentioned that alleged ganja was deposited in Malkhana in 8 white coloured plastic sacks, rather as per *malkhana* register (Ex.P-50C), when seized contraband substance was taken out for preparation of inventory before Executive Magistrate and entry was made in this regard on 18.12.2020, then only it has been mentioned that 200 kgs. Ganja taken in 8 white coloured plastic sacks was kept in safe custody and for preparation of inventory and sampling, it was taken out from Malkhana and subsequently, it was again deposited in Malkhana.

**7.1** Learned counsel for the appellant/accused further submits that alleged ganja was seized on 14.8.2020 and inventory / panchnama was prepared on 18.12.2020 i.e. after about 4 months from the seizure, but when, after recovery of alleged ganja, it was homogenized and kept in 8 white coloured plastic sacks, then how it could be kept in 20 packets whereas as per the Malkhana receipt (Ex.P-42), it was not mentioned by the Malkhana Munshi that alleged contraband was received by him in alleged 8 sacks or packets for

depositing in Malkhana. Therefore, it cannot be ruled out that, alleged samples were prepared from allegedly seized Ganja and it was sealed or not. In these circumstances, preparation of samples cannot be relied upon that it was prepared from alleged contraband substance seized from the appellant. He further submits that inventory was prepared after about 4 months of the incident.

**7.2** It is next contended by learned counsel for the appellant/accused that provisions contained in Section 52 (A) of the NDPS Act has not been complied with, as inventory, sampling, photography, etc. have not been got done by the concerned judicial Magistrate. He further submits that though in FSL report (Ex.P-44), Articles marked as "A-1" sent to it, has been reported to be contraband substance *Ganja*, but since alleged contraband substance was kept in what condition in *Malkhana* of police station i.e. in 8 plastic sacks or 20 packets, is highly contradictory, sampling was got done after about 4 months of the seizure, from the huge quantity of *Ganja* i.e. 200 kgs., only two samples, each containing 50 gms. were prepared, that too, after about 4 months from the date of incident, therefore, collection of sample and FSL report cannot be relied upon. But learned Special Court without considering aforesaid facts has convicted the appellant for the offence under Section 20(b)(ii)(C) of the NDPS Act and sentenced him to undergo rigorous imprisonment for 10 years with fine of Rs.1,00,000/-, with default stipulation, which is perverse to the evidence and law settled by Hon'ble Apex Court, hence, he prays that the appeal be allowed and appellant be acquitted of the alleged offence by setting aside the impugned judgment. In this regard, he

placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **Mohammad Khalid and another vs. State of Telangana** reported in **2024 (5) SCC 393**.

8. Per contra, learned counsel for the State submits that huge quantity i.e. 200 kgs. of contraband substance ganja was seized from the Truck driven by appellant, which has been proved by prosecution witnesses. He further submits that Hon'ble Supreme recently in the case of **Bharat Aambale vs. The State of Chhattisgarh**<sup>1</sup> has held that only non-compliance of provisions contained in Section 52 (A) of the NDPS Act will not be sufficient to acquit the accused unless there is some other lacuna in physical evidence. He further submits that learned Special Court has passed well reasoned judgment convicting & sentencing the accused/appellant for the alleged offence, which does not call for any interference.
9. I have heard learned counsel for the parties, considered their rival submissions and went through the record of the case including the record of the Special Court with utmost circumspection.
10. In the instant case, ASI Harwan Singh (P.W. 9) is Investigating Officer, who conducted the raid and all the proceedings. Constable Satyanarayan Goyal (P.W. 3) and constable Harish Korram (P.W. 7) were his accompanying police personnel. From the deposition of Harwan Singh, IO (P.W. 9) and Constable Lalit Baghel (P.W. 5) , it is proved that, provisions of Sections 42(2) and 57 of the NDPS Act have been complied with, which also gets support from the deposition of Constable Ku. Shushma Rana, who received the information/detailed

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1 Cr.A. No. 250/2025 arising out of SLP (Cr.) No. 14420/2024, decided on 06.01.2025

report in the office of D.S.P., A.J.K. (Anusuchin Jati Kalyan), Jagdalpur, Distt. Bastar. Thus, compliance of procedure envisaged under Sections 42(2) and 57 of the NDPS Act has been proved.

- 11.** As per the case of prosecution, 20 bundles, each contained 10 kg contraband substance Ganja, which were wrapped in Brown colour cellotape were recovered from the said truck driven by the appellant. Harwan Singh, IO (P.W. 9) has stated in his deposition that, after recovery of alleged contraband substance, it was identified as Ganja by burning, smelling and rubbing. In this regard, he prepared Madak Drivya Pahchan Panchnama (Ex. P-8), but he has not stated in his deposition that, while making such identification, any of alleged packets was opened or not. This fact has also not been mentioned in Madak Drivya Pahchan Panchnama (Ex. P-8) that, while aforesaid identification, any of the packets was opened.
- 12.** Both the independent witnesses have turned hostile and they have not supported the case of the prosecution, except their signatures in the documents. Therefore, whole case of the prosecution rests on the evidence of the departmental witnesses.
- 13.** As per deposition of Investigating Officer A.S.I. Harwan Singh (P.W. 9) and Samras Panchnama (Ex. P-11) prepared by him after recovery of alleged contraband in 20 packets, it was homogenized thoroughly vide Ex. P-11. It is also mentioned in Ex. P-11 that, after homogenization, it was kept in 8 plastic sacks (Bori). Thereafter, all 20 bundles of contraband substance were seized vide seizure memo (Ex. P-12), but when the contraband substance of all 20 bundles was already homogenized and kept in 8 plastic bags, then how it could be seized in

20 bundles, as A.S.I. Harwan Singh (P.W. 9) or other prosecution witnesses have not even stated in their deposition that after homogenization, the contraband substance was again kept in 20 bundles and those 20 bundles were kept in 8 plastic sacks. This fact becomes even more serious when S.K. Banjara (P.W. 10) has stated in his deposition that, 200 kg contraband substance was received by him vide Ex. P-42 for keeping in safe custody in Malkhana. Entry dated 24-8-2020 of Malkhana register (Ex. P-50-C) also shows that, 20 bundles each containing 10 kg Ganja were kept in the Malkhana, but perusal of the entry dated 18-12-2020 of said register shows that, when those contraband substance were sent for preparation of Inventory, samples etc. (for proceedings under Section 52 A of the NDPS Act), alleged 200 kg contraband substance Ganja was taken out in 8 plastic sacks (Bori) from Malkhana and after preparation of inventory and sampling etc., it was again kept in 8 packets in Malkhana. The contradictions appearing in Samras Panchnama (Ex. P-11), seizure memo (Ex. P-12) and Malkhana register (Ex. P-50-C) create serious doubt that after recovery of alleged 200 kg contraband substance, it was kept in 8 plastic sacks (Bori) or it was seized and kept in Malkhana in 20 bundles, without keeping those contraband in plastic sacks (Bori) or not, and if it was seized in 20 bundles and deposited in Malkhana in 20 bundles, then when the contraband was kept in 8 plastic sacks (Bori).

14. S.K. Banjara, Malkhana Moharrir has received the seized contraband substance on 24-8-2020 vide receipt memo (Ex. P-42) and kept it in Malkhana, which is also proved from Malkhana register (Ex. P-50-C). That contraband substance was sent on 18-12-2020 for preparation of

inventory, sampling etc. before the Executive Magistrate, who prepared report/inventory (Ex. P-47), which also gets support from deposition of ASI Harwan Singh (P.W. 9). As per his deposition and report/inventory (Ex. P-47) prepared by the Executive Magistrate, two samples, each containing 50 gm were prepared from the seized 200 kg contraband, which was kept in 8 plastic sacks (Bori), but on being weighed, its total weight was found 193.735 kg, which were homogenized. Thereafter, aforesaid two samples of 50 gm each of contraband were prepared and kept in two containers (*Dibba*), which were marked as 'A-1' and 'A-2'. Satyanarayan Goyal (P.W.3) had taken container marked as 'A-1' for depositing in FSL, which also gets support from Ex. P-21, which is duty certificate and Amad report submitted by him. Endorsement of duty certificate shows that, he had taken total 9 samples and all samples had been marked as 'A-1', meaning thereby, he had taken samples of other cases also and all were marked as 'A-1'. On being deposited alleged container 'A-1' of instant case, FSL, Jagdalpur had given receipt (Ex. P-45) to him of receiving 'packet' marked as 'A-1', not a 'container' marked as 'A-1'. Therefore, the FSL report (Ex. P-44) of the sample pertaining to the packet marked as 'A-1' cannot be held to be the FSL report pertaining to the sample marked as 'A-1', which was collected in container. Therefore, aforesaid FSL report (Ex. P-44) also cannot be relied upon.

15. As per recovery memo (Ex. P-7), Samras Panchnama (Ex. P-11) and seizure memo (Ex. P-12), alleged contraband substance was seized on 24-8-2020, but it is not proved from the deposition of ASI Harwan Singh (P.W. 9) and aforesaid documents that, after seizure of alleged

contraband, it was kept in sealed condition. This fact also does not get support from the Malkhana register (Ex. P-50-C) and sample was prepared by the Executive Magistrate vide Ex. P-47 on 18-12-2020 i.e. after more than 4 months from its seizure. After recovery, alleged 200 kg contraband substance was kept in 20 bundles itself or it was kept in 8 sacks (Bori), is also contradictory. FSL report (Ex. P-44) and receipt (Ex. P-45) issued by the FSL show that, the report was pertaining to the contraband which was received by them in packet, not in container. Therefore, it cannot be held proved beyond reasonable doubt that, the FSL report (Ex. P-44) was pertaining to the alleged contraband, which was seized from the truck driven by the appellant.

16. Physical verification report/Inventory (Ex. P-47) of alleged contraband substance was prepared by Executive Magistrate Jivesh Kumar Sori (Naib Tehsildar), who had also collected aforesaid samples, to which, it seems that for aforesaid proceeding, ASI Sudhram Netam had taken contraband substance in office of aforesaid Executive Magistrate, who prepared Ex. P-47, but none of aforesaid witnesses i.e. Executive Magistrate Jivesh Kumar Shori or ASI Sudhram Netam has been examined by the prosecution. Thus, preparation of inventory and preparation of 2 samples have also not been proved by the prosecution.
17. In the case of **Bharat Aambale vs. The State of Chhattisgarh** (2025 (8) SCC 452), Hon'ble Supreme Court has held that, non-compliance or delayed compliance with the procedure prescribed under Section 52A of the NDPS Act or the Rules / Standing Order(s) thereunder may lead the court to draw an adverse inference against the prosecution,

but such lacking will not, by itself, be fatal to the case of the prosecution, unless there are other discrepancies in the physical evidence.

18. In the case of **Mohammad Khalid (supra)**, finding various discrepancies regarding actual weight of seized Ganja, changing the original 3 packets from 7 new bags of Ganja and safe keeping them without permission of the Court, Hon'ble Supreme Court held that, these glaring loop holes in the prosecution case give rise to an inescapable inference that the prosecution has miserably failed to prove the required link evidence to satisfy the Court regarding the safe custody of the sample packets from the time of seizure till the same reached the FSL.
19. In the case of **Surepalli Srinivas Vs. State of Andhra Pradesh (Now State of Telangana)** (2025 SCC OnLine 683), the prosecution failed to prove that, seized contraband was properly sealed, it was produced before the trial Court belatedly and seized contraband was kept in separate room of P.W. 3 for 15 days, having considered aforesaid facts, Hon'ble Supreme Court allowed the appeal and extended benefit of doubt to the appellants by setting aside judgment of conviction of appellant.
20. As has been discussed in preceding paragraphs, there is material discrepancies and lacunae in the physical evidence, as it has not been proved that, after recovery of the contraband substance, the same was kept in 20 bundles or 8 sacks (Bori), it was kept in sealed condition or not, sample was collected after 4 months of its seizure, collection of sample has not been proved by examining concerned Executive

Magistrate, who prepared the sample and FSL report Ex. P-44 is not pertaining to the sample of instant case which was collected in container, rather it pertains to sample collected in packet, therefore, it cannot be held proved beyond reasonable doubt that alleged material seized from the truck driven by the appellant was Ganja. Hence, conviction of the appellant / accused as recorded by learned Special Court is illegal on the face of record and suffers from grave perversity.

21. For the foregoing reasons, this Court is inclined to extend benefit of doubt to the appellant. Resultantly, the impugned judgment dated 1-12-2022 passed by the Special Judge convicting and sentencing the appellant for the offence punishable under Section 20(b)(ii)(C) of the NDPS Act is quashed and set aside. The appellant is acquitted of the said charge levelled against him.
22. Appellant is in custody. He be set at liberty forthwith if not warranted in any other case, subject to compliance of Section 481 of the Bhartiya Nagrik Suraksha Sanhita, 2023 before concerned Special Court in its satisfaction.
23. Record of the concerned Special Court along with a copy of this judgment be sent back forthwith for compliance and necessary action.

Sd/-

**(Naresh Kumar Chandravanshi)**

**Judge**