



2026:CGHC:17109-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRA No. 605 of 2025**

Bhausab Madhukar Gore S/o Madhukar Gore Aged About 32 Years R/o Sanjay Nagar, Edgah Parisar, Ward No. 2, Shrirampur, Ahemad Nagar (M.H.)

--- **Appellant****versus**

Directorate Of Revenue Intelligence Raipur Regional Unit, Indore Zonal Unit, C/o. Sanjeet Kumar Singh, Intelligence Officer, Raipur District- Raipur (C.G.)

--- **Respondent****CRA No. 702 of 2025**

1 - N.D. Malleshwar Rao S/o Shri Nemla Virraju Aged About 37 Years R/o Rajmundri Khambala Cheru Gangam Street 32 P.S. City Police Station One Town District - Godwari Andhara Pradesh

2 - Albudi Bosu S/o Dasu Aged About 26 Years R/o Rajmundri P.S. Khmbala Cheru Vishakhapatanam Andhra Pradesh

3 - Yennade Bhujang Rao S/o Shri Satya Narayan Rao Aged About 43 Years R/o Village Driver Colony Koumadi Mudurvada P.S. Palem District - Vishakhapatanam Andhra Pradesh

---**Appellants****Versus**

Directorate Of Revenue Intelligence Raipur Regional Unit Indore Zonal Unit C/o Sanjeet Kumar Singh Intelligence Officer Raipur (C.G.)

--- **Respondent**

For Appellant- : Mr.Vivekanand Sammadar, Advocate in CRA
Bhausab Madhukar No.605.2025

For Appellants- : Mr.B.K.Chakrabarty, Advocate in CRA
N.D.Malleshwar No.702/2025
Rao and Yennade
Bhujang

For Appellant-Albudi : Mr.Pragalbha Sharma, Advocate in CRA
Bosu No.702/2025

For Respondent : Mr.A.S.Kachhawaha, Advocate

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

Judgment on Board

Per Ramesh Sinha, Chief Justice

15.04.2026

1. Since the aforesaid two criminal appeals are arising out of the same offence and same sessions case, they are being heard and decided together.
2. Appellant-Bhausab Madhukar has preferred Criminal Appeal No.605/2025 and appellants-N.D.Malleshwar Rao, Albudi Bosu and Yennade Bhujang have preferred Criminal Appeal No.702/2025 against the impugned judgment dated 10.01.2025 passed by the Special Judge (NDPS ACT), Raipur in Special (NDPS Act) Case No.81/2021, whereby learned Special Judge has convicted them under Sections 20(b)(ii)(C) and 25 of the Narcotic Drugs And Psychotropic Substances Act, 1985 (hereinafter called as "NDPS Act") and sentenced to undergo RI for 15 years and fine of Rs.1,50,000/-, in default of payment of fine to further undergo RI for three years and RI for 15 years and fine of Rs.1,50,000/-, in default of payment of fine to further undergo RI for three years. The Special Judge has also convicted appellant-N.D.Malleshwar Rao for offence under Section 29 of the NDPS Act and sentenced to undergo RI for 15 years and fine of Rs.1,50,000/-, in

default of payment of fine to further undergo RI for three years.

3. The prosecution case, in brief, is that on 03.01.2021, Intelligence Officer Mr. Gaurav Pandey of the prosecuting department received confidential information from his secret sources that a truck bearing registration number AP 05/TT/5856 was being used for the smuggling of ganja. It was also informed that a pilot vehicle was accompanying the truck, which could possibly bear registration numbers MH 45/TM/7819, AP 30/TM/0001, AP 31/AF/0909, or MH 06/AZ/0276. Both vehicles were likely to pass through Raipur between 11:00 PM and 2:00 AM. To act upon this information, Mr. Gaurav Pandey summoned two independent witnesses to the DRI office located at Panchsheel Nagar, Civil Lines, Raipur at 10:30 PM on 03.01.2021. He introduced them to the other officers present, namely Mr. Nitin Agrawal, Deputy Director, DRI Raipur Regional Unit; Mr. Roshan Kumar Gupta, Senior Intelligence Officer, DRI Raipur Regional Unit; Mr. Sumit Dwivedi, Inspector, CGST Raipur; and Mr. Shrey Naresh Singh, Inspector, CGST Raipur. After showing their identification, the officers requested the independent witnesses to accompany them during the raid, to which they agreed. The witnesses were then informed about the secret information. As stated in the complaint submitted by the DRI, the team proceeded from the DRI office at Civil Lines, Raipur towards Abhanpur along with the team members and the panch witnesses. They reached Atal Chowk, Abhanpur, and waited for the vehicle as per the informer's tip. At around 1:45 AM, a truck matching the description was seen approaching, bearing registration number AP 05/TT/5856. The officers signaled the truck to stop and, upon stopping, verified that it was indeed the same vehicle mentioned

in the information, the officers asked the driver to park the truck by the roadside and directed the two persons inside to step out. Upon inquiry, they identified themselves as N.D. Malleshwar Rao and Albudi Bosu. N.D. Malleshwar Rao was driving the truck. When asked to produce identification, both stated that they did not have any ID proof.

4. The complaint further states that the officers asked the truck driver, N.D. Malleshwar Rao, about the pilot vehicle accompanying them. He pointed towards a Maruti Swift car coming from Dhamtari side and stated that it was their pilot vehicle. The officers stopped the Maruti Swift, which bore registration number MH 06/AZ/0276—one of the suspected numbers mentioned in the information. Upon approaching the car, the officers observed that it had minor damage on the front driver's side, likely due to a collision. The officers instructed the driver to park the vehicle by the roadside and asked the three occupants to step out. Upon inquiry, they identified themselves as Y. Bhujang Rao, Bhausahab Madhukar Gore, and Pradeep Adinath Phatke. Pradeep Adinath Phatke was driving the vehicle.
5. As further stated in the complaint, when asked for identification, Y. Bhujang Rao produced his driving license (No. 4912-C2-1998), Bhausahab Madhukar Gore produced his Aadhaar card (No. 964292674852), and Pradeep Adinath Phatke produced his Aadhaar card (No. 545724393738), all bearing their respective names. Thereafter, the officers introduced themselves and asked the truck driver about the goods loaded in the vehicle. N.D. Malleshwar Rao initially stated that the truck was carrying organic fertilizer. However, upon thorough questioning, he admitted that beneath the fertilizer,

sacks of ganja were concealed. Since the location where the truck was stopped was a public road and conducting further proceedings there could cause inconvenience to the public and pose risks to life and property, the officers requested the panch witnesses and the five individuals present to proceed to the DRI office at Panchsheel Nagar, Raipur (approximately 25–30 km away) for further action. The witnesses and all five individuals agreed to this request.

6. The complaint submitted by the DRI further states that upon reaching the DRI office in Raipur, the officers began a systematic search of the truck. They observed that the truck was covered with a black tarpaulin, beneath which there was a yellow tarpaulin. During the search, when questioned, the truck driver N.D. Malleshwar Rao and Pradeep Adinath Phatke stated that approximately 720 packets of ganja, each weighing about 2 kilograms, were loaded in the vehicle. They further stated that the ganja was concealed in the front portion of the truck, hidden beneath organic fertilizer. Upon removing the tarpaulin, it was found that the truck contained bags of organic fertilizer. Some bags were labeled “Haritha Supergro” (weight 40 kg), while others were labeled “Sanjeevani Neem Powder (Oiled)” (weight 25 kg), and all bags bore the manufacturer’s name “Lotus Biotech.” The officers removed these bags sequentially from the rear of the truck. Beneath the first three rows of fertilizer bags, additional bags were found concealed in such a way that they appeared to contain packets. In the presence of witnesses, one such bag was taken out and marked as B-1. Upon opening it, 12 brown-colored packets were found. When questioned, it was stated that these contained ganja, which was being transported from Selur, Andhra Pradesh to Ahmednagar, Maharashtra.

One packet was taken out in the presence of witnesses and marked as P-1.

7. The complaint further states that the officers cut open the packet with a blade and found that it contained compressed dried leaves, flowers, and seeds. On rubbing and smelling the substance, it appeared to be ganja. This was confirmed using a narcotics testing kit in the presence of witnesses, which tested positive for ganja. After confirmation, all remaining packets from the said bag were removed and marked individually from P-2 to P-12, and the bags were marked from B-2 to B-60. All remaining packets were similarly removed and marked sequentially up to P-720. In total, 60 bags containing 720 packets were recovered. From the remaining 719 packets, the officers randomly selected packets numbered 21, 55, 93, 133, 173, 204, 254, 295, 330, 373, 423, 451, 501, 525, 570, 615, 662, and 705. Small cuts were made in each of these packets and the contents were tested using a narcotics kit, all of which tested positive for ganja.
8. The complaint further states that the officers informed the witnesses that the total quantity of ganja needed to be determined. Thereafter, all 720 packets were weighed using an official weighing scale available at the office. The total weight of the ganja recovered from the 60 bags was found to be 1533.791 kilograms. The officers also counted the organic fertilizer bags, which totaled 270. Of these, 189 bags were labeled "Haritha Supergro," each weighing 40 kg, and 81 bags were labeled "Sanjeevani Neem Powder (Oiled)," each weighing 25 kg. The total weight of the organic fertilizer was calculated to be 9585 kilograms. All 270 bags were cut open to confirm that they indeed

contained only organic fertilizer.

9. The complaint further states that the officers examined the cabin of the truck bearing registration number AP 05/TT/5856 in the presence of witnesses. They found a file containing documents related to the truck, which revealed that the vehicle was registered in the name of Nemla Durga Malleshwar Rao (Mobile No. 9100285647). Additionally, two tax invoices (No. GST/53 and GST/54) of Kalyan Commercial Corporation (GSTIN: 37AFIPV5073P1ZH) were found in the cabin. Invoice No. GST/53 was billed to Shri Shirdi Sai Nursery, Jaipur, Odisha, and Invoice No. GST/54 was billed to Shri Shirdi Sai Nursery, Shirdi, Maharashtra. Both invoices mentioned 40 bags of Sanjeevani Neem Powder (25 kg each). However, the number of "Haritha Supergro" (40 kg) bags mentioned in GST/53 and GST/54 were 75 and 125 respectively. Both invoices contained the same buyer's phone number. Upon inquiry, Pradeep Adinath Phatke stated that the phone number belonged to him. Several toll receipts were also recovered from the truck cabin.
10. The complaint further states that the officers informed the witnesses that smuggling of ganja is an offence under the NDPS Act, 1985. Accordingly, all 720 packets of ganja weighing 1533.791 kg, the truck bearing registration number AP 05/TT/5856, and the Maruti Swift car bearing registration number MH 06/AZ/0276 were seized. The file containing the vehicle documents was also seized. All seized items were sealed with seal number 23 of the DRI Raipur Regional Unit under the provisions of the NDPS Act, 1985. Additionally, the 270 bags of organic fertilizer (total weight 9585 kg), which were used to conceal

the ganja, were also seized and sealed with the same seal. All seized items including the ganja packets, the truck, the car, the document file, toll receipts, and fertilizer bags were deposited on 04.01.2021 in the secured storage (Malkhana) of the DRI Raipur Regional Unit for safekeeping.

11. The complaint further states that during further proceedings, the voluntary statements of all five individuals were recorded under Section 67 of the NDPS Act, 1985. In their statements, they disclosed their roles in the smuggling of ganja. Upon establishing their prima facie involvement, all five individuals were formally arrested and produced before the court.
12. The complaint further states that the Deputy Director of DRI, Nitin Agrawal, through his letter dated 04.01.2021, requested the District Magistrate to appoint an Executive Magistrate for proceedings under Section 52A of the NDPS Act, 1985. Acting on this request, the Collector and District Magistrate, Raipur, appointed Mr. Rakesh Devangan, Naib Tehsildar and Executive Magistrate, and directed him to appear at the DRI Regional Unit, Raipur. In compliance, the Executive Magistrate appeared on 07.11.2024 at the DRI office, where the 720 seized packets of ganja (total weight 1533.791 kg) recovered from the truck were opened and inspected. All packets were found properly sealed with seal number 23 of the DRI Raipur Regional Unit. Each packet bore the signatures of the DRI officers, both witnesses, and all five accused persons. Due to the large number of packets, it was not feasible to draw samples from each one individually. Therefore, it was decided that the 720 packets would be divided into

18 groups of 40 packets each. From each packet in a group, 10 grams of ganja would be taken and mixed to form a composite sample of 400 grams. From this mixture, two samples of 30 grams each would be drawn.

13. The complaint submitted by the DRI further states that, initially, from packets numbered P-1 to P-40, 10 grams of ganja was taken out from each packet. The total quantity of 400 grams collected from these packets was mixed thoroughly and placed in a plastic pouch. This pouch was labeled as "L." From this composite mixture (L), two samples of 30 grams each were drawn. These samples were placed in separate plastic pouches. Thereafter, the first sample was kept in a yellow envelope and marked as "S-01," while the second sample was placed in another yellow envelope and marked as "SD-1." Thus, from each lot, two separate samples were prepared, placed in yellow envelopes, and appropriately labeled. The same sampling procedure was followed for all 18 lots. From each lot, two samples were drawn, resulting in a total of 36 samples from 18 lots. Each sample was placed in a yellow envelope, properly marked, and sealed with the metal seal of the Executive Magistrate.
14. The complaint further states that after the sampling process, the remaining quantity (approximately 340 grams per lot, after removing two samples of 30 grams each) from each of the 18 lots was placed in separate green envelopes. Each green envelope was sealed with the metal seal of the Executive Magistrate. Thereafter, all 720 packets of ganja were re-packed into their respective bags and the bags were sealed again with the metal seal of the Executive Magistrate. These 60

bags, containing ganja with a total weight of 1526.91 kilograms after sampling, were deposited in the DRI Raipur Regional Unit's warehouse (godown).

15. The complaint further states that the seizure officer, Mr. Gaurav Pandey, submitted a report regarding the seizure and arrest within the prescribed time period under Section 57 of the NDPS Act, 1985, to his superior officer, Mr. Roshan Kumar Gupta, a gazetted officer of DRI. Thereafter, Mr. Roshan Kumar Gupta, Senior Intelligence Officer, appointed Mr. Sanjeet Kumar Singh, Intelligence Officer, as the Investigating Officer for conducting further investigation. Subsequently, Deputy Director Mr. Nitin Agrawal, through his letter dated 28.01.2021, sent the first set of samples (marked from S-01 to S-18), drawn from the 18 lots (each lot containing 40 packets out of the total 720 packets), through Mr. Gaurav Pandey to the Central Forensic Science Laboratory (CFSL), Bhopal, for chemical examination. After receiving the test report, it was attached to the complaint and submitted before the Court.
16. In this case, the predecessor of the undersigned framed charges against appellant N.D. Malleshwar Rao under Sections 20(b)(ii)(C), 25, and 29 of the NDPS Act. Charges under Sections 20(b)(ii)(C) and 29 were framed against co-accused Albudi Bosu, Yennade Bhujang Rao, and Bhausahab Madhukar Gore. When the charges were read over and explained to them, they denied the allegations and pleaded not guilty. During their examination under Section 313 of the Code of Criminal Procedure, they claimed themselves to be innocent.
17. In support of its case, the prosecution examined a total of 9 witnesses:

Ashok Kumar Ghosh Chaudhary (PW-1), Gaurav Pandey (PW-2), Nitin Agrawal (PW-3), Roshan Kumar Gupta (PW-4), Govind Ghadge (PW-5), Prateek Khandelwal (PW-6), Sumit Dwivedi (PW-7), Sanjeet Kumar Singh (PW-8), and Mrs. C. Sangeeta (PW-9). The defense, however, did not examine any witnesses in support of its case.

18. After appreciation of oral as well as documentary evidence led by the prosecution the learned trial Court has convicted the appellants and sentenced them as mentioned in the earlier part of this judgment. Hence these appeals.
19. Learned counsel for the appellants submitted that appellant-N.D. Malleshwar Rao, is a truck driver by profession, earning his livelihood through transportation of goods; appellant-Albudi Bosu is a helper/cleaner working along with the driver; appellant-Y. Bhujang Rao, is a private individual/driver and appellant-Bhausahab Madhukar Gore, is a private worker/businessman. It is contended that all the appellants are innocent persons who have been falsely implicated in the present case. Learned counsel further submitted that the prosecution has failed to establish conscious and exclusive possession of the alleged contraband. The ganja was allegedly concealed beneath bags of organic fertilizer in the truck, and there is no cogent evidence to show that the appellants had knowledge of such concealment. Particularly, appellant-Albudi Bosu, being merely a helper, had no control over the goods, and the appellants travelling in the car were not in possession of the truck. Mere presence at the spot cannot be equated with conscious possession. It is further submitted that the entire case of the prosecution rests upon the testimonies of

official witnesses of the DRI, and there is no reliable independent corroboration. The alleged independent witnesses are not trustworthy, and the recovery itself becomes doubtful in absence of credible independent evidence. Learned counsel also submitted that there has been non-compliance of mandatory provisions of the NDPS Act. The prosecution has failed to prove proper compliance of Section 42 of the NDPS Act with regard to recording and communication of secret information. Further, procedural safeguards under Sections 52 and 57 have not been duly followed, which vitiates the entire proceedings. It is also contended that the sampling procedure adopted by the officers of the DRI is fundamentally defective, as samples were drawn after mixing contents of multiple packets together. Such a method destroys the identity of individual packets and makes it impossible to ascertain whether each packet contained contraband, thereby rendering the recovery unreliable. Learned counsel further submitted that there are serious lapses in the sealing, sampling, and custody of the seized material. The sampling was conducted at a later stage before the Executive Magistrate, and the prosecution has failed to establish an unbroken chain of custody. This creates a serious possibility of tampering with the alleged seized substance. It is also argued that the alleged statements recorded under Section 67 of the NDPS Act cannot be treated as confessional statements and are inadmissible in evidence. The conviction cannot be sustained on the basis of such statements. Further, it is submitted that there is no evidence to establish any criminal conspiracy under Section 29 of the NDPS Act. There is no material to show any prior meeting of minds or agreement between the appellants. Mere allegation of travelling in separate

vehicles does not constitute conspiracy. In view of the above submissions, it is contended that the prosecution has failed to prove its case beyond reasonable doubt, and the appellants are entitled to the benefit of doubt. It is, therefore, prayed that this Court may be pleased to set aside the impugned judgment of conviction and sentence and acquit the appellants of all charges.

20. On the other hand, learned counsel appearing for the respondent–DRI opposes the submissions made on behalf of the appellants and submits that the judgment of conviction passed by the learned trial court is legal, proper, and based on clear, cogent, and reliable evidence on record, warranting no interference by this Court. It is submitted that the prosecution has successfully proved that the appellants were apprehended pursuant to specific and credible prior intelligence, which led to a coordinated interception of the truck and its accompanying pilot vehicle. The recovery of a massive quantity of 1533.791 kilograms of ganja from the truck, concealed beneath layers of organic fertilizer, stands fully established through consistent testimony of official witnesses, contemporaneous seizure documents, and seizure memos duly prepared at the spot and later in the DRI office in the presence of independent witnesses and the Executive Magistrate. It is further submitted that the contention regarding absence of conscious possession is wholly misconceived. The evidence clearly demonstrates that appellant N.D. Malleshwar Rao was driving the truck and had complete control over the

vehicle and its contents, while the co-appellants were actively involved in the coordinated movement of the contraband through a pilot vehicle. The surrounding circumstances, including identical invoices, linked phone numbers, and coordinated travel, clearly establish knowledge and conscious participation of all appellants in the transportation of narcotics. It is further submitted that the statutory provisions of the NDPS Act have been duly complied with. The secret information was properly recorded and acted upon, and the seizure, arrest, and reporting under Sections 42, 52, and 57 were carried out within the prescribed legal framework. Minor procedural irregularities, if any, do not go to the root of the matter nor vitiate the prosecution case in view of the overwhelming evidence of recovery. It is also submitted that the sampling process was conducted in strict compliance with Section 52A of the NDPS Act under the supervision of the Executive Magistrate, ensuring transparency and authenticity. The method adopted for composite sampling from representative lots is a recognized procedure to ensure scientific and fair analysis of such a large quantity of contraband. Learned counsel further submits that the statements of the accused recorded during investigation, though corroborative in nature, are supported by independent documentary and forensic evidence, including positive CFSL reports confirming the presence of ganja. The conviction is not based solely on such statements but on a complete chain of evidence. It is further submitted that the charge

of conspiracy under Section 29 of the NDPS Act is clearly made out from the coordinated actions of the appellants, transportation of contraband in a concealed manner, and use of a pilot vehicle and fabricated commercial documentation to evade detection. In view of the overwhelming evidence on record, learned counsel submits that the prosecution has proved its case beyond reasonable doubt, and the appeals are devoid of merit. Accordingly, it is prayed that the appeals be dismissed and the conviction and sentence recorded by the learned trial court be upheld.

21. We have heard learned counsel for the parties and perused the record of the trial Court with utmost circumspection.
22. In the present case, the raiding officer examined before the Court, Intelligence Officer Gaurav Pandey (PW-2) of the DRI Regional Unit, Raipur, in his deposition, stated in the second line of paragraph 1 that on 03.01.2021, he received reliable secret information that approximately 1–2 thousand kilograms of ganja was being transported from Odisha to Maharashtra via Raipur route in a truck bearing registration number AP 05/TT/5856. It was also informed that two persons were present in the truck, and that a car bearing registration numbers MH 45/TM/7819, AP 39/TM/0061, AP 31/AF/0909, or MH 06/AZ/0276 might be accompanying the said truck. It was further informed that both vehicles were likely to reach Raipur between 11:00 PM and 2:00 AM. The witness further stated that he recorded the said information in a secret information note (Ex.P-2). The witness further deposed in the first line of paragraph 2 of his statement that after recording

the said information, he forwarded it to his senior officer Roshan Gupta, who in turn forwarded it to the Deputy Director, Nitin Agrawal. The Deputy Director thereafter constituted a raiding team for action, in which the witness himself was included. In paragraph 3 of his statement, the raiding officer further stated that for further action, he called two independent witnesses, namely Ashok Kumar and Roshan Kumar, and informed them about the secret information and requested them to assist in the proceedings. Upon their consent, he introduced them to other officials. Thereafter, all officers along with the panch witnesses left the DRI office at around 9:30 PM in an official vehicle towards Abhanpur. It was decided to intercept the vehicles near Atal Chowk, Abhanpur, and the team waited there for the vehicle as per the information received. At about 1:45 AM, a truck bearing registration number AP 05/TT/5856 was seen coming from the direction of Dhamtari, which was stopped by the witness and other officers by signaling it to halt. The registration number was matched with the information received and confirmed to be the same vehicle. In paragraph 3 (eleventh line), the witness further stated that the said truck was directed to be parked on the roadside, and two persons present in the truck were asked to step down. Upon inquiry, the driver identified himself as N.D. Malleshwar Rao and the other person as Albudi Bosu. Both persons were asked to produce identity documents, but they stated that they did not possess any identification proof. When the driver N.D. Malleshwar Rao was asked whether any car was accompanying the truck as a pilot vehicle, he pointed towards a Maruti Swift coming from the direction of Dhamtari. The said vehicle, bearing registration number MH 06/AZ/0276, was stopped and upon verification, its number matched one of the suspected numbers mentioned in the information. Upon inspection, the officers found three persons inside the car, and the vehicle was found to be slightly damaged from the driver's side. The occupants were asked to step out and were identified as Y. Bhujang Rao, Bhausahab Madhukar Gore, and

Pradeep Adinath Phatke, out of whom Pradeep Adinath Phatke was driving the vehicle. Upon request, Y. Bhujang Rao produced his driving license (No. 4912-C2-1998), while Bhausahab Madhukar Gore and Pradeep Adinath Phatke produced their Aadhaar cards. In paragraph 4 of his statement, the witness further stated that he and other officers introduced themselves and showed their identity cards to all five persons, informing them that they had received information regarding illegal transportation of narcotic substances in the truck and that a pilot car was accompanying the said truck. Upon this, the truck driver N.D. Malleshwar Rao stated that the vehicle was loaded with organic fertilizer. However, upon detailed interrogation by the officers, it was revealed that ganja was concealed beneath the fertilizer bags. The witness further stated in paragraph 5 that since the place of interception was a public road, there was a gathering of vehicles and persons, and continuation of proceedings at that location was not feasible. It was also causing inconvenience to public movement and there was a possibility of risk to life and property. Therefore, all five persons, both vehicles, panch witnesses, and officers were taken to the DRI Regional Unit office at Panchsheel Nagar at around 3:00 AM for further proceedings.

23. In the present case, Intelligence Officer Gaurav Pandey (PW-2) of the DRI Regional Unit, Raipur, who was examined before the Court, stated in the first line of his deposition that upon reaching the office of the Revenue Intelligence Directorate at Panchsheel Nagar, he and his accompanying officers conducted a systematic search. He stated that the truck's loading area was covered with a black tarpaulin, beneath which another yellow tarpaulin was found. During the search, upon inquiry, the truck driver N.D. Malleshwar Rao and Pradeep Adinath stated that approximately 720 packets of ganja, each weighing around 2 kilograms, were loaded in the truck. They further stated that the

ganja was concealed beneath organic fertilizer bags in the loading area. Upon removal of the tarpaulin, organic fertilizer bags were found, some bearing the label "Haritha Supergro" (40 kg) and others "Sanjeevani Neem Powder Oiled" (25 kg). The witness further stated in paragraph 6 (ninth line) that after removing three rows of fertilizer bags, some bags were found concealed between them which appeared to be different from the organic fertilizer bags. One such bag was taken out and marked as B-1. Upon opening the bag, 12 packets wrapped in blue plastic and further covered with brown tape were recovered. When questioned, the two persons sitting in the truck stated that the packets contained ganja and that they were transporting it from Paderu, Andhra Pradesh to Ahmednagar, Maharashtra.

24. The witness further stated in paragraph 7 (first line) that one of the recovered packets was taken out and marked as P-1. The said packet was cut open with a blade, and the substance inside was found to contain compressed dried leaves, flowers, and seeds. Upon rubbing and smelling, it was identified as ganja. The substance was further tested using a narcotics detection kit, which confirmed it to be ganja. He further stated in paragraph 7 that all remaining packets were taken out and marked from P-2, P-3 to P-12. In total, 59 additional bags were recovered from the truck and marked as B-2 to B-60. The packets contained in these bags were further numbered from P-13 to P-720. Each bag contained 12 packets, and thus a total of 60 bags containing 720 packets were recovered. Samples from randomly selected packets were tested using the NDPS kit, and all tested positive for ganja. The witness further stated in paragraph 8 (first line)

that all packets were weighed using a government weighing scale, and a chart was prepared showing a total weight of 1533.791 kilograms. During the inspection of the truck cabin, documents related to vehicle registration number AP 05/TT/5856 were found, and the vehicle was registered in the name of Nemla Durga Malleshwar Rao. It was also found that the cabin contained documents of Kalyan Commercial Corporation, including GSTIN details and two tax invoices. Both invoices mentioned the same phone number. Upon inquiry, Pradeep Adinath stated that the said phone number belonged to him. Toll receipts were also found in the truck. The witness further stated in paragraph 9 that similar toll receipts were also recovered from the Swift car, and upon comparison, it was found that both vehicles had passed through the toll plaza at the same time.

25. The witness further stated in paragraph 10 (first line) that 270 bags of organic fertilizer weighing a total of 9585 kilograms were used to conceal the contraband ganja and were seized. In paragraph 11, he stated that during investigation, the 720 packets of ganja were repacked in their respective plastic bags in sets of 12, sealed with seal number 23 of the DRI Regional Unit, Raipur, and all seized materials along with vehicles were secured. A seizure panchnama dated 03-04.01.2021 comprising 17 pages was prepared, marked as Exhibit P-1. The witness further stated in paragraph 12 that on 04.01.2021, the statements of the accused persons N.D. Malleshwar Rao, Albudi Bosu, Y. Bhujang Rao, and Pradeep Adinath were recorded as per their versions, marked as Exhibits P-3 to P-6. He further stated that during the recording of statements, the accused persons produced their mobile phones, which were seized and deposited in the

malkhana for safe custody. He further stated in paragraph 14 that the seized articles were sealed and deposited in the malkhana, and entries were made in the malkhana register No. 01/2021 dated 04.01.2021. On 07.01.2021, the seized material was taken out for proceedings under Section 52A of the NDPS Act at 11:30 AM, and this was duly recorded. After sampling (S-01 to S-18 and SD-01 to SD-18), the remaining contraband was repacked into 18 green envelopes and resealed and deposited back in the malkhana at 8:30 PM the same day.

26. The witness further stated in paragraph 15 that on 11.01.2021, the sealed contraband was deposited in the CGST warehouse for safe custody. Thereafter, samples S-01 to S-18 were sent to CFSL Bhopal on 28.01.2021 for chemical examination, and the movement was recorded in the malkhana register. The CFSL report was received on 20.06.2021 through Prateek Khandelwal and was duly entered in the records. The witness further stated in paragraph 16 that mobile phones seized from the accused were handed over to Investigating Officer Sanjeet Kumar Singh for further investigation, and the same was entered in the seizure register on 08.04.2021. He also stated that the entire proceedings report was submitted to his superior officer on 06.01.2021 (Exhibit P-13).
27. The witness further stated in paragraph 17 that he prepared all NDPS procedural documents, annexures, and index during the investigation. In paragraph 18, he stated that a letter was sent for depositing seized contraband and vehicles in the CGST warehouse (Ex.P-15). In paragraph 19, he stated that he was authorized to deposit samples in

CFSL (Ex.P-16), and in paragraph 20, he stated that acknowledgment of receipt of samples and CFSL report was obtained (Ex.P-17 and Ex.P-18). The witness further stated in paragraph 21 that 720 packets were divided into 18 lots of 40 packets each, and from each lot, two samples were drawn under Section 52A of the NDPS Act in the presence of the Executive Magistrate. He further stated that he appeared with 18 sealed sample packets, remaining bulk contraband, and malkhana register before the Court. He also referred to the destruction report (Annexure-3). He further stated regarding seizure of mobile phones from the accused.

28. The prosecution also examined Roshan Kumar Gupta (PW-4), who stated in paragraph 1 that on 03.01.2021, he received a written secret information from Intelligence Officer Gaurav Pandey stating that a truck bearing registration number AP 05/TT/5856 was transporting approximately 1000–2000 kilograms of ganja from Odisha to Maharashtra via Raipur–Jagdalpur route. It was also mentioned that two persons were likely present in the truck and that a pilot vehicle bearing registration number MH 45/TM/7819, AP 39/TM/0061, AP 31/AF/0909, or MH 06/AZ/0276 might be accompanying it. The witness stated that he forwarded the information to his superior officer, Deputy Director Nitin Agrawal, and was part of the raiding team. He also stated that he was present during the proceedings and the seizure panchnama (Ex.P-1) was prepared in his presence.
29. The prosecution also examined Constable Govind Ghadge (PW-5), who stated that on 04.06.2021 he carried sealed sample packets from CFSL Bhopal to the DRI warehouse as per orders and deposited them

on 07.06.2021. He also stated that receipt and report were properly recorded. Further, Accounts Officer Prateek Khandelwal (PW-6) stated that on 18.06.2021 he was authorized to collect the examined samples and report from CFSL and deposit them in the DRI malkhana. Accordingly, he collected the materials and deposited them on 20.06.2021 with the concerned malkhana in-charge at the DRI Regional Unit, Raipur.

30. Section 43 of the NDPS Act provides the powers of seizure and arrest in public place which reads as under:

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

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

(b) detain and search any person whom he has reason to believe to have committed an offence punishable under this Act, and if such person has any narcotic drug or psychotropic substance or

controlled substance in his possession and such possession appears to him to be unlawful, arrest him and any other person in his company.

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

31. 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."

32. 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."

33. In the matter of **Bharat Aambale vs. The State of Chhattisgarh** in **CRA No. 250 of 2025**, order dated 06.01.2025, the Hon'ble Supreme Court has held that irrespective of any failure to follow the procedure laid under Section 52-A of the NDPS Act if the other material on record adduced by the prosecution inspires confidence and satisfies the

Court regarding both recovery and possession of the contraband from the accused, then even in such cases the Courts can without hesitation proceed for conviction notwithstanding any procedural difficulty in terms of Section 52-A of the NDPS Act.

34. In the matter of **Bharat Aambale** (supra) the Hon'ble Supreme Court in Para 25 to 37 has held as under:

“25. In Noor Aga v. State of Punjab & Anr. (2008) 16 SCC 417, the order of conviction had been set-aside not just on the ground of violation of Section 52A but due to several other discrepancies in the physical evidence as to the colour and weight, and due to the lack of any independent witnesses. In fact, this Court despite being conscious of the procedural deficiencies in the said case in terms of Section 52A observed that the matter may have been entirely different if there were no other discrepancies or if the other material on record were found to be convincing or supported by independent witnesses. The relevant observations read as under: -

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

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108. There exist discrepancies also in regard to the time of recovery. The recovery memo, Exhibit PB, shows that the time of seizure was

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

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111. In a case of this nature, where there are a large number of discrepancies, the appellant has been gravely prejudiced by their non-examination. It is true that what matters is the quality of the evidence and not the quantity thereof but in a case of this nature where procedural safeguards were required to be strictly complied with, it is for the prosecution to explain why the material witnesses had not been examined. The matter might have been different if the evidence of the investigating officer who recovered the material objects was found to be convincing. The statement of the investigating officer is wholly unsubstantiated. There is nothing on record to show that the said witnesses had turned hostile. Examination of the independent witnesses was all the more necessary inasmuch as there exist a large number of discrepancies in the statement of official witnesses in regard to

search and seizure of which we may now take note.”

(Emphasis supplied)

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

27. In such circumstances, particularly where there has been lapse on the part of the police in either following

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

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

deficiency whilst preparing the memo. The relevant observations read as under: -

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

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10. The instructions issued by the Narcotics Control Bureau, New Delhi are to be followed by the officer-in-charge of the investigation of the crimes coming within the purview of the NDPS Act, even though these instructions do not have the force of law. They are intended to guide the officers and to see that a fair procedure is adopted by the officer-in-charge of the investigation. It is true that when a contraband article is seized during investigation or search, a seizure mahazar should be prepared at the spot in accordance with law. There may, however, be circumstances in which it would not have been

possible for the officer to prepare the mahazar at the spot, as it may be a chance recovery and the officer may not have the facility to prepare a seizure mahazar at the spot itself. If the seizure is effected at the place where there are no witnesses and there is no facility for weighing the contraband article or other requisite facilities are lacking, the officer can prepare the seizure mahazar at a later stage as and when the facilities are available, provided there are justifiable and reasonable grounds to do so. In that event, where the seizure mahazar is prepared at a later stage, the officer should indicate his reasons as to why he had not prepared the mahazar at the spot of recovery. If there is any inordinate delay in preparing the seizure mahazar, that may give an opportunity to tamper with the contraband article allegedly seized from the accused. There may also be allegations that the article seized was by itself substituted and some other items were planted to falsely implicate the accused. To avoid these suspicious circumstances and to have a fair procedure in respect of search and seizure, it is always desirable to prepare the seizure mahazar at the spot itself from where the contraband articles were taken into custody.

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16. Law on the point is very clear that even if there is any sort of procedural illegality in conducting the search and seizure, the evidence collected thereby will not become inadmissible and the court would consider all the circumstances and find out whether any serious

prejudice had been caused to the accused. If the search and seizure was in complete defiance of the law and procedure and there was any possibility of the evidence collected likely to have been tampered with or interpolated during the course of such search or seizure, then, it could be said that the evidence is not liable to be admissible in evidence.” (Emphasis supplied)

29. A similar view as above was reiterated in the decision of **State of Punjab v. Makhan Chand** reported in **(2004) 3 SCC 453** wherein this Court after examining the purport of Section 52A of the NDPS Act and the Standing Order(s) issued thereunder, held that the procedure prescribed under the said order is merely intended to guide the officers to see that a fair procedure is adopted by the officer in charge of the investigation and they were not inexorable rules. The relevant observations read as under: -

“10. This contention too has no substance for two reasons. Firstly, Section 52-A, as the marginal note indicates, deals with “disposal of seized narcotic drugs and psychotropic substances”. Under sub-section (1), the Central Government, by a notification in the Official Gazette, is empowered to specify certain narcotic drugs or psychotropic substances, having regard to the hazardous nature, vulnerability to theft, substitution, constraints of proper storage space and such other relevant considerations, so that even if they are material objects seized in a criminal case, they could be disposed of after following the procedure prescribed in sub-sections (2) and (3). If the procedure prescribed in sub-sections (2) and (3) of Section 52-A is

complied with and upon an application, the Magistrate issues the certificate contemplated by sub-section (2), then sub-section (4) provides that, notwithstanding anything to the contrary contained in the Indian Evidence Act, 1872 or the Code of Criminal Procedure, 1973, such inventory, photographs of narcotic drugs or substances and any list of samples drawn under sub-section (2) of Section 52-A as certified by the Magistrate, would be treated as primary evidence in respect of the offence. Therefore, Section 52-A(1) does not empower the Central Government to lay down the procedure for search of an accused, but only deals with the disposal of seized narcotic drugs and psychotropic substances.

11. Secondly, when the very same Standing Orders came up for consideration in Khet Singh v. Union of India this Court took the view that they are merely intended to guide the officers to see that a fair procedure is adopted by the officer in charge of the investigation. It was also held that they were not inexorable rules as there could be circumstances in which it may not be possible for the seizing officer to prepare the mahazar at the spot, if it is a chance recovery, where the officer may not have the facility to prepare the seizure mahazar at the spot itself. Hence, we do not find any substance in this contention."

(Emphasis supplied)

30. Thus, from above it is clear that the procedure prescribed by the Standing Order(s) / Rules in terms of Section 52A of the NDPS Act is only intended to guide

the officers and to ensure that a fair procedure is adopted by the officer- in-charge of the investigation, and as such what is required is substantial compliance of the procedure laid therein. We say so because, due to varying circumstances, there may be situations wherein it may not always be possible to forward the seized contraband immediately for the purpose of sampling. This could be due to various factors, such as the sheer volume of the contraband, the peculiar nature of the place of seizure, or owing to the volatility of the substance so seized that may warrant slow and safe handling. There could be situations where such contraband after being sampled cannot be preserved due to its hazardous nature and must be destroyed forthwith or vice-verse where the nature of the case demands that they are preserved and remain untouched. Due to such multitude of possibilities or situations, neither can the police be realistically expected to rigidly adhere to the procedure laid down in Section 52A or its allied Rules / Orders, nor can a strait-jacket formula be applied for insisting compliance of each procedure in a specified timeline to the letter, due to varying situations or requirements of each case. Thus, what is actually required is only a substantial compliance of the procedure laid down under Section 52A of the NDPS Act and the Standing Order(s)/ Rules framed thereunder, and any discrepancy or deviation in the same may lead the court to draw an adverse inference against the police as per the facts of each and every case. When it comes to the outcome of trial, it is only after taking a cumulative view of the entire material on record including such discrepancies, that the court should proceed either to convict or acquit the accused. Non- compliance of the procedure envisaged under Section 52A may be fatal only in cases where such non-compliance goes to the heart or root of the matter. In

other words, the discrepancy should be such that it renders the entire case of the prosecution doubtful, such as instances where there are significant discrepancies in the colour or description of the substance seized from that indicated in the FSL report as was the case in **Noor Aga** (supra), or where the contraband was mixed in and stored with some other commodity like vegetables and there is no credible indication of whether the narcotic substance was separated and then weighed as required under the Standing Order(s) or Rules, thereby raising doubts over the actual quantity seized as was the case in **Mohammed Khalid** (supra), or where the recovery itself is suspicious and uncorroborated by any witnesses such as in **Mangilal** (supra), or where the bulk material seized in contravention of Section 52A was not produced before the court despite being directed to be preserved etc. These illustrations are only for the purposes of bringing clarity on what may constitute as a significant discrepancy in a given case, and by no means is either exhaustive in nature or supposed to be applied mechanically in any proceeding under the NDPS Act. It is for the courts to see what constitutes as a significant discrepancy, keeping in mind the peculiar facts, the materials on record and the evidence adduced. At the same time, we may caution the courts, not to be hyper-technical whilst looking into the discrepancies that may exist, like slight differences in the weight, colour or numbering of the sample etc. The Court may not discard the entire prosecution case looking into such discrepancies as more often than not an ordinarily an officer in a public place would not be carrying a good scale with him, as held in **Noor Aga** (supra). It is only those discrepancies which particularly have the propensity to create a doubt or false impression of illegal possession or recovery, or to

overstate or inflate the potency, quality or weight of the substance seized that may be pertinent and not mere clerical mistakes, provided they are explained properly. Whether, a particular discrepancy is critical to the prosecution's case would depend on the facts of each case, the nature of substance seized, the quality of evidence on record etc.

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

32. Thus, the prosecution sans the compliance of the procedure under Section 52A of the NDPS Act will not render itself helpless but can still prove the seizure or recovery of contraband by leading cogent evidence in this regard such as by examining the seizing officer, producing independent witnesses to the recovery, or presenting the original quantity of seized substances before the court. The evidentiary value of these materials is ultimately to be assessed and looked into by the court. The court should consider whether the evidence inspires confidence. The court should look into the totality of circumstances and the credibility of the witnesses, being mindful to be more cautious in their scrutiny where such procedure has been flouted. The cumulative effect of all evidence must be

considered to determine whether the prosecution has successfully established the case beyond reasonable doubt as held in **Noor Aga** (supra).

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

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

35. What this provision entails is that, where the seized substance after being forwarded to the officer empowered is inventoried, photographed and thereafter samples are drawn therefrom as per the procedure prescribed under the said provision and the Rules/Standing Order(s), and the same is also duly certified by a magistrate, then such certified inventory, photographs and samples has to mandatorily be treated as primary evidence. The use of the word “shall” indicates that it would be mandatory for the court to

treat the same as primary evidence if twin conditions are fulfilled being (i) that the inventory, photographs and samples drawn are certified by the magistrate AND (ii) that the court is satisfied that the entire process was done in consonance and substantial compliance with the procedure prescribed under the provision and its Rules/Standing Order(s).

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

NDPS Act and the Rules/Standing Order(s) thereunder would have to mandatorily be treated as primary evidence, irrespective of the fact that the bulk quantity has not been produced and allegedly destroyed without any lawful order.

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

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

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

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

(supra).”

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

36. This Court has carefully gone through the entire evidence on record, the findings recorded by the learned trial Court, the submissions advanced by the learned counsel for the appellants as well as the learned counsel for the DRI, and the material circumstances emerging from the prosecution case. Upon such consideration, this Court is of the considered view that the judgment of conviction passed by the learned trial Court does not suffer from any illegality, perversity, or infirmity warranting interference in exercise of appellate jurisdiction.
37. The evidence on record clearly establishes that the raiding party proceeded from the DRI office at Panchsheel Nagar, Raipur, and strategically intercepted the suspected vehicles at Abhanpur, District Raipur. At about 01:45 AM, the truck bearing registration No. AP 05/TT/5856 was intercepted and stopped. The driver of the truck was identified as appellant N.D. Malleshwar Rao, and another occupant was identified as Albudi Bosu. Both were unable to produce any valid identification documents. On further inquiry, it was revealed that the truck was being piloted by a Maruti Swift car bearing registration No. MH 06/AZ/0276, which was also intercepted, and three occupants therein were identified as Y. Bhujang Rao, Bhausahab Madhukar Gore, and Pradeep Adinath Phatke. The prosecution evidence further

establishes that upon interrogation at the spot and subsequently at the DRI office, the appellants disclosed that the truck was loaded with organic fertilizer, beneath which ganja was concealed. Due to public inconvenience and security concerns, the entire convoy along with accused persons and panch witnesses was taken to the DRI Regional Unit, Raipur, where a detailed and systematic search was conducted. The search proceedings conducted at the DRI office clearly revealed that the truck was covered with black and yellow tarpaulin sheets and contained large quantities of organic fertilizer bags labeled as "Haritha Supergro" and "Sanjeevani Neem Powder (Oiled)" manufactured by Lotus Biotech. Upon systematic removal of the fertilizer bags, concealed packets of contraband were discovered beneath them. One such bag marked B-1 was opened, revealing 12 packets marked P-1 to P-12, which upon examination contained dried flowering tops, seeds, and leaves, which on sensory examination and narcotic testing kit were confirmed to be ganja.

38. The evidence further establishes that a total of 60 bags containing 720 packets of ganja were recovered from the truck. The total weight of the contraband was found to be 1533.791 kilograms, which clearly falls within the category of commercial quantity under the NDPS Act. The organic fertilizer bags totaling 270 in number were also examined and found to be genuine, used merely as a camouflage for concealment of contraband. The prosecution has also proved beyond reasonable doubt that the entire recovery process was conducted in the presence of independent panch witnesses and responsible officers, and all legal safeguards under the NDPS Act were duly complied with. The seizure

was properly documented through seizure memos, panchnama, and contemporaneous records. The contraband was sealed with official seal No. 23 of DRI, and the chain of custody remained intact throughout.

39. The sampling procedure adopted under Section 52A of the NDPS Act has also been proved to be in strict compliance with statutory requirements. The Executive Magistrate was duly appointed by the District Magistrate, Raipur, who supervised the sampling process. The 720 packets were divided into 18 lots, and representative samples were drawn, sealed, and forwarded for forensic examination. The CFSL report confirmed that the substance seized was indeed ganja. The integrity of samples and seals has not been successfully challenged by the defence. The prosecution witnesses, particularly PW-2 Gaurav Pandey (seizure officer), PW-4 Roshan Kumar Gupta, and other official witnesses, have consistently supported the prosecution case. Their testimonies are coherent, reliable, and duly corroborated by documentary evidence. The defence has failed to elicit any material contradiction or omission that would render their testimony doubtful.
40. The contention raised on behalf of the appellants that there were procedural irregularities or violation of mandatory provisions of the NDPS Act is not borne out from the record. On the contrary, the evidence demonstrates substantial and complete compliance with statutory safeguards. Minor discrepancies, if any, are natural and do not go to the root of the prosecution case. The defence plea of false implication is also devoid of merit, as no plausible explanation has

been offered as to how such a massive quantity of commercial contraband came to be transported in a vehicle controlled and accompanied by the appellants. The voluntary statements of the accused persons, recorded during investigation, further corroborate their involvement in the illegal transportation of ganja, and the same find support from surrounding circumstances and documentary evidence.

41. It is well-settled that in cases under the NDPS Act involving recovery of commercial quantity, once possession and recovery are established and procedural safeguards are complied with, a strong presumption arises under the statute, which the appellants have failed to rebut in the present case.
42. Learned trial Court has, after appreciating the entire evidence in its correct perspective, recorded well-reasoned findings holding the appellants guilty under Sections 20(b)(ii)(C), 25 and 29 of the NDPS Act, 1985. This Court finds that the findings are based on proper appreciation of evidence and are neither perverse nor contrary to law.
43. In view of the aforesaid discussion, this Court is of the considered opinion that the prosecution has successfully proved its case beyond reasonable doubt against all the appellants. The impugned judgment of conviction and sentence passed by the learned trial Court does not suffer from any legal infirmity.
44. As a fall out of aforesaid consideration, we are of the considered opinion that there is no force in the appeals filed by the appellants.

Accordingly, their appeals (**CRA No. 605 of 2025** and **CRA No.702 of 2025**) are hereby **dismissed**.

45. The appellants are reported to be in jail. They shall serve the entire sentence awarded by the learned trial Court. The appellants are entitled for set off of their undergone period during the trial as well as during the pendency of the present appeals.
46. 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 their appeal before the Hon'ble Supreme Court with the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee.
47. Let a copy of this judgment and the original records be transmitted to the trial Court concerned forthwith for necessary information and compliance.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

HEAD NOTE

Non-compliance with Section 52-A of the Narcotic Drugs And Psychotropic Substances Act, 1985 does not automatically invalidate the prosecution's case. A conviction can still be sustained if the evidence on record convincingly proves the recovery and possession of contraband.