



HIGH COURT OF TRIPURA
AGARTALA

Crl. A. (J) 45/2026

Smt. Kabirung Reang, wife of Sri Udai Ram Reang, resident of Labarampara, P.S. Kanchanpur, District- North Tripura *on behalf of convict **Sri Udairam Reang** (now in Kanchanpur Sub-Jail).*

.... Appellant

Versus

The State of Tripura **-----Respondent**

For the Appellant(s)	:	Mr. B. Debbarma, Advocate Mr. R. Debbarma, Advocate Mr. AK Reang, Advocate
For the Respondent(s)	:	Mr. Raju Datta, Public Prosecutor
Date of hearing	:	21.09.2026
Date of delivery of Judgment & Order	:	05.10.2026
Whether fit for reporting	:	Yes

BEFORE
HON'BLE JUSTICE DR. T. AMARNATH GOUD
JUDGMENT & ORDER

Heard Mr. B. Debbarma, learned counsel, appearing for the appellant. Also heard Mr. Raju Datta, learned PP appearing for the respondent.

2. The appellant, by means of filing the present appeal have challenged the judgment and order of conviction and sentence dated 30.03.2026 passed by the learned Special Judge, Dharmanagar, North Tripura, in connection with case No. Special (NDPS) 29 of 2020, whereby the appellant was convicted under Section 22(b)(ii)(B) of the NDPS Act, and sentenced to suffer rigorous imprisonment for 5(five) years with default stipulation.

3. The case of prosecution, as per material available on record, is that, on 25.02.2020 at 1235 hrs Inspector Paritosh Das, OC Kanchanpur (PW-12) received telephonic information from

secret source that one youth, aged about 25/30 years, was going towards Dasada by a passenger vehicle No-TR-02-8-2635 (Maxx) with contraband items like Ganja. Accordingly, the matter was noted in PS GD vide Kanchanpur PS GDE No-20, dated 25.02.2020 and conveyed the same to his higher authority. It is also alleged that being instructed by higher authority he himself along with staffs left PS vide GD No. 21, dated 25.02.2020 for Barahaldi Naka Point to detain the said vehicle, and reaching there he along with the SDPO, Kanchanpur and other staff started vehicle checking duty and during checking they found one vehicle No-TR-02-B-2635 (Maxx) was coming towards Dasda and at about 1345 hrs stopped the said vehicle near the Naka point and started checking the said vehicle. The FIR also reveals that during checking he found one passenger was carrying two bags and on being asked he disclosed his identity as Sri Udai Ram Reang (appellant-accused) and that the bags belonged to him. It is also alleged that on being searched of the bags he found one packet of dry ganja in each bag i.e. total two packets and the complainant arrested the said person, weighed the said bundles and found total 07 KG (a packet of 03 Kg and a packet of 04 Kg) dry ganja. The FIR further reveals that both the bundles of ganja were seized in presence of the SDPO, Kanchanpur and other witnesses. Thereafter, the informant detained the accused-appellant and brought him to the PS and lodged a suo-moto complaint before the O/C, Kanchanpur PS on 25.02.2020. Subsequently, the FIR has been registered as Kanchanpur PS case no. 8 of 2020 under Sections 20(b)(ii)(B)/29 of NDPS Act and PW-12 thereafter prepared inventory and gave

detailed information to his superior i.e. the SP. On 26.02.2020, the complainant produced the accused-appellant before the Court alongwith all the police papers.

4. Subsequently, the investigation was assigned to SI Shyama Prasad Das (PW-14) who on completion of investigation submitted charge sheet on 20.10.2020 against the accused appellant under Sections 20(b)(ii)(B) of NDPS Act. Thereafter, the trial court took cognizance of offences against the accused appellants, and after due compliance with the statutory requirement of furnishing copies of all relevant documents to the accused person, charges under Section 20(B) of NDPS Act was framed against the accused-appellant, to which the accused-appellant pleaded not guilty and claimed to be tried. To substantiate the case, prosecution examined as many as 15 witnesses and documents were exhibited. On closure of prosecution witnesses, the accused-appellant was examined under Section 313 Cr.P.C. to which he denied all the incriminating materials brought against him and declined to adduce any defence witness. Basing on the materials and evidences on record, the Special Judge, convicted and sentenced the accused-appellant, as stated *supra*.

5. This court has meticulously gone through the case records, the orders, the communications, the exhibited documents and the judgments relied upon by the learned counsel appearing for the parties to the *lis*, contained therein.

6. At the very outset, this court is to ascertain as to whether the contraband items were seized from the possession of the accused-appellant and whether the appellant was in conscious possession of the contraband articles and also whether the search, seizure and arrest was conducted without authorization. Thus, before this Court holds the accused-appellant guilty of the offence under the NDPS Act, it is essential to find out as to whether there is any violation of Section 42 of the NDPS Act.

5(i) Section 42 of the NDPS Act, deals with power of entry, search, seizure and arrest without warrant or authorization. It reads thus:

"42. Power of entry, search, seizure and arrest without warrant or authorisation.— (1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property 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 is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,—

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector:

Provided further that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior."

5(ii) From the prosecution case, it is seen that the PW-12 is the Complainant-cum-Seizing Officer, who on receipt of the secret information of transportation of contraband articles entered the same into GD being No. 20 (Exbt. 14), dated 25.02.2020 at 1235 hours and immediately communicated his superior i.e. PW-8, SDPO vide RG Form No. 1835-36 (Exbt. 16) dated 25.02.2020, and on receipt of the information, PW-8, authorized PW-12 through authorization letter (Exhibit-15) to proceed with the search, seizure and detention, and the same was entered into GDE No. 21 (Exbt. 15), dated 25.02.2020 at 1245 hours, and in the entire procedure, PW-12 also accompanied the team formed for the said action. In course of the operation, the appellant was detained and was noticed under Section 50 of the NDPS Act (Exhibit 3) for his body search and on being authorized through authorization letter issued by the SDPO (Exbt. 4), he was searched by the complainant in presence of independent witnesses (PW 9) and on search, the contraband articles, as aforestated, were recovered from his possession and seized through a seizure list (Exbt. 2). Subsequently, the appellant was arrested on 25.02.2020 and on 22.02.2024 in compliance of Section 57 NDPS Act, PW-2 conveyed PW-1, the superior Officer, a detailed report (Exbt. 13) dated 25.02.2020. PW-12 had also prepared the inventory (Exbt-5) on 25.02.2020 at the spot. On 29.02.2020 representative sample was drawn before the JM, 1st class, Kanchanpur and correctness was certified by JM, 1st class under sub-section(3) of Section 52-A of the Act accordingly and remaining samples were once again

packed and sealed in front of JM, 1st class and sent to District Godown, North Tripura, Dharmanagar by the 2nd IO (PW-14) vide forwarding letter dated 29.02.2020, and vide Godown Receipt No. II (Exbt. A), the Officer-in-Charge of District Godown, North Tripura District issued receipt copy of the sealed packages to PW-14. On 02.03.2020 PW-8 forwarded the samples drawn to the SFSL for chemical examination and on 13.03.2020 the Director, SFSL sent the report to PW-8. Thereafter, by letter dated 11.09.2020 PW-15 sought for permission for destruction of the remaining ganja before the Special Judge (NDPS), Dharmanagar, and after obtaining permission, the remaining ganja were destructed and accordingly PW-15 submitted the certificate of destruction dated 04.09.2021 to the Special Judge (NDPS), Dharmanagar.

5(iii) From the entirety, it is well established that the entire search and seizure was done in compliance of Section 42 of the NDPS Act, and there was no violation of Section 42 in any manner whatsoever. For better appreciation the intimation dated 25.02.2020, made by PW-12 to PW-8, wherein PW-12 sought for executing the information with available logistic, is as under:

"IN LIEU OF RG FORM (BY HAND)

To,
SUB DIVISIONAL POLICE OFFICER, KANCHANPUR(.),
INFO- SP(CS) NORTH TRIPURA,
FROM- INSPECTOR PARITOSH DAS, OC KANCHANPUR PS(.)
NO. 1835-36

Dated 21.02.2024

REFERENE KANCHANPUR PS GDE NO. 20, DATED 25.02.2020 (.) TODAY AT 1235 HRS. I HAVE RECEIVED TELEPHONIC INFORMATION FROM MY SECRET SOURCE THAT ONE YOUTH AGE ABOUT 25/30 GOING TOWARDS DASADA BOARDED WITH PASSENGER VEHICLE BEARING REGISTRATION NO-TR-02-B-2635 (MAXX) WITH CONTRABAND ITEMS LIKE GANJA (.) SOURCE ALSO REPORTED THAT URGENTLY DETAINED THE SAID VEHICLES OTHERWISE SAID YOUTH MAY FLED AWAY AFTER CONCEAL THE CONTRABAND ITEMS TO EVADE POLICE NOTICE (.) SO NECESSARY PERMISSION MAY KINDLY BE ACCORDED TO RECOVERY THE GANJA AND DETAINED THE SAID YOUTH (.) FOR KIND INFORMATION(.)"

5(iv) Now, coming to the question of the search to be conducted in public place, which according to learned counsel for the appellant has been violated. While acting under Section 43 of the Act, the empowered officer has the power of causing search, seizure of the contraband articles and arrest a person who is found to be in possession of any NDPS articles, in a public place where such possession appears to be unlawful on specific information that would require a warrant under Section 42 of the Act. Section 43 of the NDPS Act, 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.]"

5(v) On applying ratio, it is aptly clear that the search operation was conducted on information that a youth aged about 25/30 years going towards Dasada by boarding in a passenger vehicle bearing No. TR-02-B-2635 was carrying contraband articles and was apprehended after proper checking, but the above information was neither in respect of the appellant nor any particular person. Till the disclosure of the appellant that he was carrying the contraband articles, the police personnel were fully unaware about the fact that the appellant was committing any offence under the Act. Admittedly, the search was conducted in public place i.e. at Barahaldi Naka point, Kanchanpur.

Thus, provision Section 43 of the NDPS Act, is very much attracted in the matter and in no way fatal for the prosecution case.

5(vi) In the present case, PW-12 had categorically deposed that when the accused-appellant was apprehended, PW-12 served notice under Section 50 NDPS Act in this regard, which was also proved in trial. Further, PW-12 also categorically deposed that he conducted the personal search of the accused-appellant in presence of independent witnesses and recovered the contraband articles from the possession of the accused-appellant in a ladies bag and thereby seized the same by preparing seizure lists (Exbt. 2) and also the took signatures of the accused-appellant on the seizure list. Thus, there was compliance of mandate of Section 50 of the NDPS Act. Section 50 of the Act is reproduced hereunder for convenience:

“50. Conditions under which search of persons shall be conducted. —

(1)When any officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazette Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.

(2)If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in subsection (1).

(3)The Gazette Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(4)No female shall be searched by anyone excepting a female.

(5)When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazette Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6)After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior.”

5(vii) During trial, the depositions of the prosecution witnesses are corroborative in nature and the defense failed to shake their evidence. Deposition of PW-10, Deputy Director of

SFSL, also supports the deposition of PWs 8 and 12. PW-1, 2, 3, 5, 6, 7, 8 and PW-12 conjointly have deposed that while they were on naka point on the relevant date and time they stopped the vehicle and on search, they found contraband (ganja) from the possession of the appellant and subsequently he was arrested. They have also identified by the appellant in the dock in trial by face. In cross examination, nothing in favour of accused-appellant was extracted by defence.

5(viii) From examination of the accused-appellant under Section 313 Cr.P.C., except some denials, nothing has emerged so as to shaken the prosecution case. The accused-appellant had failed to point out any animosity of detaining authority or other witnesses for his false involvement in contraband articles. Further, the prosecution has well established that the contraband articles were recovered and seized from the possession of the accused-appellant as it could be well presumed that the accused-appellant was in conscious possession of the contraband articles. The signature of the possessor as revealed from the Arrest Memo is of the appellant, which has not been denied or disputed in the entire trial. Since the prosecution has established its case, automatically the onus shifts to the accused-appellant to demonstrate that he lacked knowledge or intent regarding the possession of the contraband articles, but the accused-appellant in all manner failed.

5(ix) From the entirety and documents available on record, it is well established, that the entire search, seizure and arrest have been maintained following mandates of NDPS Act,

and there is no violation of the Act, in any manner whatsoever and further the sanctity of chain of custody *qua* deposit of Exhibits was also duly proved by the prosecution.

6. Learned counsel for the appellants, Mr. Debbarma, has questioned legality and sustainability of the judgment of the learned trial court. Mr. Debbarma, learned counsel contended that the entire search and seizure has been done violating the mandates of NDPS Act especially Section 42 of the Act. Learned counsel further submitted that there are discrepancies in the deposition of the witnesses and also the alleged dates. Learned counsel also submitted that the inventory drawn was not as per mandate of Section 52-A of the Act. Learned counsel has also submitted that the seized contraband is of intermediary quantity and since his arrest the appellant is in jail. Learned counsel has also submitted that the prosecution has miserably failed to complete the chain of custody. Learned counsel has also submitted that the malkhana register has not been produced in trial which creates doubt on the prosecution story. In fine, learned counsel for the appellant has submitted that taking into consideration the loopholes, the impugned judgment of conviction and sentence is liable to be set-aside. In support of his submission, learned counsel has relied upon the decisions rendered by the apex court in ***Abdul Rajik vs. State of MP***, reported in [Criminal Appeal No. 1561 of 2014]; ***Karnail Singh vs. State of Haryana*** reported in [Criminal Appeal No. 36 of 2003]; ***Darshan Singh vs. State of Haryana***, reported in [Criminal Appeal No. 216 of 2009]; ***The State of Himachal***

Pradesh vs. Kansara Mayur, reported in [Criminal Appeal No. 1515 of 2015]

7. *Per contra*, Mr. Datta, learned counsel appearing for the respondent has submitted that no mandate under the NDPS Act has been violated and the entire search and seizure is made in accordance with law. Mr. Datta, learned counsel has further submitted that the defense has miserably failed to refute the deposition of PW-12(the complainant) regarding the alleged investigation i.e. from seizure to destruction of the contraband. Learned PP has further submitted that the appellant knowing fully well was carrying the contraband articles with him. It has further been submitted that the prosecution has totally failed to shake the deposition of the witnesses which are corroborative. Learned PP has further submitted that the documents exhibited clearly prove the involvement of the appellant in the alleged crime. To conclude, learned PP has submitted that the grounds taken by the defense in the instant appeal are misconceived and untenable and without any merit, hence urged to dismiss the appeal and to maintain the judgment of conviction and sentence. Learned PP has placed his reliance upon a judgment of Hon'ble Apex Court in **State of Haryana**, reported in **(2004) 5 SCC 188**; **Gurmail Chand vs. State of Punjab**, reported in **(2021) 14 SCC 334**; **The State of Tripura vs. Jammu Baig**, reported in [Criminal Appeal 53 of 2025]; **Mehboob Shah vs. State of Madhya Pradesh**, reported in **2026 SCC OnLine SC 1366**.

8. Here in this case, the information was received by PW-12 on 25.02.2024 and on receipt of such information, he entered the same in GDE and thereafter conveyed the information in writing to his superior on that date itself seeking authorization to cause search and seizure in terms of Section 57 of the NDPS Act, and the endorsement was also proved in trial. The search was made in public place in terms of Section 43 of the NDPS Act, in presence of independent witnesses with prior notice to the appellant under Section 50 of NDPS Act. Thus, the empowered officer i.e. PW-12 has recorded the secret information received in writing *before* conducting the search and raid and the said information was forthwith conveyed to his superior officer and after being authorized by the superior officer i.e. SDPO, the empowered officer i.e. PW-12, conducted the search and seizure. However from the record, correspondences (exhibited) it is clear that the entire procedure of the search, seizure, disposal has been maintained as per procedure. Thus, there is no violation of any of the mandatory provisions of NDPS Act, in this regard, therefore, the submission of learned counsel for the appellant that there was violation of mandatory provisions of NDPS Act, cannot sustain.

8(i) Further, in course of trial, there was no suggestions put on the part of the defense that the contraband articles was related to other cases or that in examination of the appellant under Section 313 Cr.P.C., he did not assert that the said contraband articles are related with any other cases or that he

was wrongly detained or that, the appellant did not utter a single word to discard his possession of the contraband articles or the bags recovered from his possession. Moreover, the contraband articles were seized from direct possession of the appellant from where it could easily be presumed that the appellant was in conscious possession of the contraband articles. The apex court through various of its decisions has repeatedly underscored that possession under the NDPS Act should not only be physical but also conscious. Conscious possession implies that the person knew that he had the illicit drug or psychotropic substance in his/her control and had the intent or knowledge of its illegal nature.

8(ii) Minor omissions in documentation do not automatically vitiate any conviction under the NDPS Act, provided the overall evidence regarding the recovery and possession of the contraband inspires confidence. Since the prosecution has been able to establish the chain of custody and prove its case through credible oral and documentary evidence, minor procedural lapses do not necessarily lead to interfere with the findings of the learned trial court. In addition, the chain of custody in the present case remains clear and continuous. At no stage has any evidence been brought out to indicate tampering, substitution or mishandling. The forensic report confirms the remnants to be ganja(cannabis) in the sample, which stands in complete harmony with the seizure, thus, there was compliance of Section 52-A(2) of the NDPS Act. Section 52 of the NDPS Act, reads as under:

"52A. Disposal of seized narcotic drugs and psychotropic substances.--²[(1) The Central Government may, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration, in respect of any narcotic drugs, psychotropic substances, controlled substances or conveyances, by notification in the Official Gazette, specify such narcotic drugs, psychotropic substances, controlled substances or conveyance or class of narcotic drugs, class of psychotropic substances, class of controlled substances or conveyances, which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may, from time to time, determine after following the procedure hereinafter specified.]

(2) Where any³[narcotic drugs, psychotropic substances, controlled substances or conveyances] has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the officer referred to in sub-section (1) shall prepare an inventory of such³[narcotic drugs, psychotropic substances, controlled substances or conveyances] containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the³[narcotic drugs, psychotropic substances, controlled substances] or conveyances or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the³[narcotic drugs, psychotropic substances, controlled substances or conveyances] in any proceedings under this Act and make an application, to any Magistrate for the purpose of--

(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of such magistrate, photographs of⁴[such drugs, substances or conveyances] and certifying such photographs as true; or

(c) allowing to draw representative samples of such drugs or substances, in the presence of such magistrate and certifying the correctness of any list of samples so drawn.

(3) Where an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.

(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1972) or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying an offence under this Act, shall treat the inventory, the photographs of⁵[narcotic drugs, psychotropic substances, controlled substances or conveyances] and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence.]"

8(iii) Learned trial Court in **paragraph 33** of the impugned judgment has elaborately discussed the materials in evidence and has given sufficient reasoning. It would be apposite to quote the relevant paragraphs:

"33.Thus, therefore, I find it can be said that on 25.02.2020 at any time after 1345 hrs at Barahaldi Naka Point under Kanchanpur PS the accused was found in possession of 07 KG dry ganja while he was traveling by vehicle No-TR-02-B-2635 (Maxx) for the following facts and circumstances:

i) From the evidence of PW12 and from Ext.10, the FIR, and from Ext.14, the GD entry No. 20, dated 25.02.2020, it is proved that PW12, the informant received secret information and made GD entry vide No. 20.

ii) From the evidence of PW12 and from Ext.10, the FIR, and from Ext.16, the letter, and from Ext.14, the GD entry No. 20, dated 25.02.2020, it is proved that higher authority was informed in writing about the secret information.

iii) From the evidence of PW8 and from Ext.4, the authorization letter, I find PW8, the SDPO authorized PW12, the informant to conduct search and seizure.

iv) From the evidence of PW12 and PW8 and from Ext.3 the notice, it is proved that notice was issued to the accused marked Ext.3.

v) From the evidence of PW12, PW1, PW2, PW3 and PW7 and from Ext.10, the FIR, and from Ext.2, the seizure list, it is proved that 07 kg ganja was recovered from the possession of accused and seized by preparing seizure list marked Ext.2. PW5 corroborated the same.

vi) From the evidence of PW12 and from Ext.10, the FIR, it is clear and proved FIR was filed by PW12 marked Ext.10.

vii) From the evidence of PW12 and PW8 and from Ext.10, the FIR, Ext.12 and Ext.5, the inventory, it is proved that PW12 prepared inventory of contraband items.

viii) From the evidence of PW12 and from Ext.13, the details report, it is proved that details report was given to the higher authority about search, seizure and arrest in view of section 57 of NDPS Act.

- ix) From the evidence of PW14, the IO and from the evidence of PW8, and from Ext.18, the forwarding letter sent to SFSL, it is proved that seized contraband was sent to SFSL through the SDPO for chemical examination.
 - x) From the evidence of PW10 and from Ext. 6, the SFSL report, it is proved that seized contraband are ganja (cannabis).
 - xi) PW12, PW1, PW2, PW3, PW8 and PW14 identified accused Udairam Reang.
- Accordingly Point No.(i) is decided in affirmative and against the accused but in favour of prosecution."

8(iv) In *Crl. A. 53 of 2025 [The State of Tripura vs. Jammu Baig]*, this Court while dealing with the issue of non-production of malkhana register, in **paragraph 11** has specifically opined as under:

"11. Regarding non-production of Malkhana register before the trial court during a trial is not necessarily fatal to the prosecution's case. On close scrutiny of the record, it appears that neither the seized articles nor the remaining of the samples has been produced before the Trial Court. Now the question that emerges is when there is legal evidence available on record of the recovery of contraband articles from the possession of the respondent which, on chemical examination, found to be ganja, and which has also not been rebutted by the respondent by cogent evidence, except stating that they had been falsely been implicated in this case, whether the same is unsustainable in law on the ground that recovered articles have not been produced in the Court. In view of this court, regarding safeguard of the seized item, viewing chance of tampering and also whether the recovered and sealed item reached to the chemical laboratory, from the materials available on record, this court do not find any such infirmity. To add, if Malkhana register has not been produced in the Court, it will not make any difference because after drawing samples before the JM, 1st Class the same were kept intact under seal and gala, the same were sent to SFSL after affixing seal, and SFSL received the samples intact and the same will reveal from Order dated 11.03.2022 passed by the learned trial court. In these circumstances, it is apparent that there was no opportunity to tamper with the impression of seal. That apart, the report of SFSL dated 25.04.2022 also shows that the yellow coloured parcel they received was sealed with 08 wax seals with impression of SDPO, Teliamura. On 08.03.2022 the IO alongwith PW-1, 2, 3, 6, 7, 8, 10 seized the vehicle and the contraband articles. Thereafter, PWs 3,6,7,8 and 10 put their signatures on the seizure list and the same were exhibited during trial on confirmation by the said PWs. PW-1 stated that after seizure, the seized items were taken to PS. PW 5 was in-charge of District NDPS godown in whose presence the packets were produced before the court and were again deposited to the godown. PW-8 during cross-examination stated that he has sent the samples to SFSL on 15.03.2022. PW-9 in his deposition stated that on 11.03.2022 the contraband items were withdrawn under MR No. 250 and was again deposited to NDPS godown. PW-10 is the complainant of the suo-moto complaint. The defense during trial failed to discard the prosecution evidence except mere denial. The I.O. of the case prepared inventory and for correctness drawn sample and taken photographs and kept the same in godown for safe custody, thereafter, sent the sample to SFSL through SDPO, collected the report, prayed for pre-trial disposal of the contraband items and as per order of learned court arranged for disposal of the same and thereby produced the certificate of destruction. The IO has investigated the case in detail and submitted his charge-sheet which in all circumstances establishes the link from seizing to destruction, thus, no link has been found missing or doubtful in the case of the prosecution. Further, from the cross examination put to the prosecution witnesses, it has been found that the defence has not challenged the authenticity of depositing of the case property with the Malkhana to none of the witness of the prosecution, so examined. The prosecution has proved that the seized items remained safe and un-tampered from the moment of seizure until they reached the forensic laboratory. The contraband articles were seized by the police during vehicle checking. Following the seizure, the necessary formalities were observed, and the samples of the contraband were drawn, sealed, and sent to the SFSL for examination, which confirmed the substance as ganja, and the same has well been proved by the prosecution witnesses and documents relied therein. In view of all this, this Court is of the opinion that non-production of Malkhana register in the Court is in no way fatal to the prosecution case and the respondent is not entitled to have any benefit of this lacuna."

In ***Gurmail Chand (supra)***, the apex court while dealing with the mandate of Section 57 of the Act, in *para 10*, has held thus:

“10. The mere fact that the witness of seizure Hari Krishan has appeared as DW1 does not lead to the conclusion that the entire prosecution story has to be disbelieved. There are signatures of Hari Krishan in the seizure memo along with other police officers. The Trial Court as well as the High Court has rightly accepted the seizure, which was held to be in accordance with law. DW1 has not denied his signatures on the seizure memo rather his excuse was that it was taken on the blank paper which was rightly disbelieved by the Courts below. In so far as production of the case property, the Judicial Magistrate himself has appeared in the witness box and deposed that it was produced in the Court. The mere fact that one seal was illegible does not vitiate the proceeding. In so far as submissions on the basis of Section 57 of NDPS Act is concerned, it has been held that the said provision is not to be interpreted to mean that in event the report is not sent within two days, the entire proceeding shall be vitiated. The provision has been held to be directory and to be complied with but mere not sending the report within the said period cannot have such consequence as to vitiate the entire proceeding. A three-Judge Bench of this Court in *Sajan Abraham vs. State of Kerala* has held that non-compliance of Section 57 would not vitiate the prosecution case. In paragraph 12 following was laid down:

"The last submission for the appellant is, there is non-compliance with Section 57 of the Act. He submits under it, an obligation is cast on the prosecution while making an arrest or seizure, the officer should make full report of all particulars of such arrest or seizure and send it to his immediate superior officer within 48 hours of such arrest or seizure. The submission is, this has not been done. Hence the entire case vitiates. It is true that the communication to the immediate superior has not been made in the form of a report, but we find, which is also recorded by the High Court, that PW5 has sent copies of FIR and other documents to his superior officer, which is not in dispute. Ext.P-9 shows that the copies of the FIR along with other records regarding the arrest of the appellant and seizure of the contraband articles were sent by PW5 to his superior officer immediately after registering the said case. So, all the necessary information to be submitted in a report was sent. This constitutes substantial compliance and mere absence of any such report cannot be said to have prejudiced the accused. This section is not mandatory in nature. When substantial compliance has been made, as in the present case, it would not vitiate the prosecution case. In the present case, we find PW5 has sent all the relevant material to his superior officer immediately. Thus we do not find any violation of Section 57 of the Act."

In ***Jarnail Singh (supra)***, the apex court while dealing with the mandate of Section 42 of the Act, in *paras 9 to 12*, has held thus:

“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.

11. We, therefore, hold that in the facts of this case Section 50 of the NDPS Act was not applicable since the contraband was recovered on search of a vehicle and there was no

personal search involved. The requirement of the proviso to Section 42 was also not required to be complied with since the recovery was made at a public place and was, therefore, governed by Section 43 of the Act which did not lay down any such requirement. Additionally, since the Superintendent of Police was a member of the search party and was exercising his authority under Section 41 of the NDPS Act, the proviso to Section 42 were not attracted.

12. In the result this appeal is allowed, the judgment and order of the High Court is set aside and the respondents are sentenced to undergo rigorous imprisonment for ten years each under Section 15 of the NDPS Act and to pay a fine of Rs.1,00,000/-, in default to suffer further rigorous imprisonment for a period of two years. The respondents shall be taken into custody to serve out the sentence subject to the provisions of Section 428 of the Criminal Procedure Code."

9. Upon a careful re-appreciation of the entire evidence, this Court finds that the prosecution witnesses has given a cogent and consistent account of receipt of secret information and reducing the same into writing, and forwarding it to superior and making contemporaneous entries in the Station Diary thereafter making search and seizure and arrest of the accused-appellants and the entire procedure has been completed following the mandates of the NDPS Act. The evidence of prosecution witnesses is also corroborated by documentary material and has remained undented in cross-examination. Further, mere non-production of malkhana register does not typically hamper or derail the prosecution's case. Moreover, in terms of the findings of the learned trial court, the appellant has not made out a case for interference in the impugned Judgment and Order.

10. On over all appreciation of the evidence available on record, this court of the considered view that the prosecution has proved its case beyond any shadow of doubt. The learned trial court was right in convicting the accused appellant on the basis of the evidences let in by the prosecution. On re-appreciation of entire evidence, this court does not find any illegality or

perversity in the judgment of the trial court. Judgment of conviction and sentence of the trial court appears to be sound and proper and it does not warrant interference at the hands of this court. The appeal filed by the appellant is bereft of merits and is free from any ambiguity.

11. In view of the aforesaid, there is no merit in this appeal, and the same is, accordingly, ***dismissed***.

Pending application(s), if any, also stands dismissed.

JUDGE

**SAIKAT
KAR**

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