



CGHC010348422024



2026:CGHC:26821-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1883 of 2024

Dorilal S/o Badan Singh Aged About 35 Years R/o House No. 183, Vishan Ganj,
Mathura, Uttar Pradesh- 281001

--- Appellant

versus

Directorate Of Revenue Intelligence Raipur Regional Unit, Indore Zonal Unit
C/o Sanjeet Kumar Singh, Intelligence Officer, Raipur, Chhattisgarh

--- Respondent

For Appellant	:	Mr. B.P. Singh, Advocate
For Respondent/Directorate of Revenue Intelligence	:	Mr. Anumeh Shrivastava, Advocate



CGHC010357452024



2026:CGHC:26822-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1901 of 2024

Chandraveer @ Pintu/ Chintu S/o Shri Deewan Singh Aged About 28 Years R/o
Patti -Chuhara, Sonai, Aligarh, Bhanduri Sonai, Mathura, U.P. -281206

--- Appellant

versus

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

--- Respondent

For Appellant	:	Mr. Hemant Gupta,Advocate
For Respondent/Directorate of Revenue Intelligence	:	Mr. Anumeh Shrivastava, Advocate



CGHC010370882024



2026:CGHC:26823-DB
NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1924 of 2024

Amit Kumar @ Jeetu S/o Shri Deewan Singh Aged About 31 Years R/o Nagla Bari, Post - Tuksan, District - Hathras, Uttar Pradesh.

--- Appellant

versus

Directorate Of Revenue Intelligence 30/civil Lines, Panchsheel Nagar Raipur Regional Unit, Indore Zonal Unit, C/o Sanjeet Kumar Singh, Intelligence Officer, Raipur, Chhattisgarh.

--- Respondent

For Appellant	:	Mr. Avinash K. Mishra,Advocate
For Respondent/Directorate of Revenue Intelligence	:	Mr. Anumeh Shrivastava, Advocate



CGHC010351582024



2026:CGHC:26825-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1926 of 2024

Bhupendra Singh @ Bhupi S/o Girraj Singh Aged About 32 Years R/o Vill Nagla

Lacchi Chandap, Hathras, Mahamaya Nagar, 204101 Distt. Hathras State Uttar Pradesh (Fathers Name Correctly Mentioned)

--- Appellant

versus

Directorate Of Revenue Intelligence Raipur Regional Unit Chhattisgarh

--- Respondent

For Appellant	:	Mr. Pranav Tiwari,Advocate
For Respondent/Directorate of Revenue Intelligence	:	Mr. Anumeh Shrivastava, Advocate



CGHC010527392025



2026:CGHC:26824-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 2605 of 2025

Tummala Veketshwar Rao S/o Tummala Ramanya Aged About 58 Years R/o Teacherss Lay Out, Vishakhapatanam Pendurathi, Vishakhapatanam Andra, Pradesh - 530551

--- Appellant

versus

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

---- Respondent

(Cause title taken from Case Information System)

For Appellant	:	Mr. B.P. Singh, Advocate
For Respondent/Directorate of Revenue Intelligence	:	Mr. Anumeh Shrivastava, Advocate

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

Judgement on Board

01/07/2026

Per Ramesh Sinha, Chief Justice

1. All these appeals are arising out of the same incident and the same Special NDPS Case No. 33 of 2022, therefore, all the aforesaid appeals are being heard and decided together.
2. The details of criminal appeals filed by the respective appellants are given hereinbelow:

Criminal Appeals	Appellants/accused persons
CRA No. 1883 of 2024	Dorilal
CRA No. 1901 of 2024	Chandraveer @ Pintu/Chintu
CRA No. 1924 of 2024	Amit Kumar @ Jeetu
CRA No. 1926 of 2024	Bhupendra Singh @ Bhupi
CRA No. 2605 of 2025	Tummala Veketshwar Rao

3. All these appeals have been filed under Section 415 (2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (in short 'BNSS') by the respective appellants against the impugned judgments of conviction and sentence dated 25.07.2024 and dated 17.11.2025 (CRA No. 2605 of 2025), passed by learned Special Judge (NDPS Act), Raipur in Special NDPS Case No. 33 of 2022. The said Special NDPS case is arising out of the crime No. 36 of 2021, registered at Directorate of Revenue Intelligence, Raipur Regional Unit, Raipur for the offence under Sections 8-C, 20(b)(ii)(C), 25, 27-A and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act'). The appellants have been convicted and sentenced in the following manner:-

For the appellant Dorilal in CRA No. 1883 of 2024, appellant Chandraveer @ Pintu/Chintu in CRA No. 1901 of 2024, appellant Amit Kumar @ Jeetu in CRA No. 1924 of 2024 and appellant Bhupendra Singh @ Bhupi in CRA No. 1926 of 2024

Conviction	Sentence
U/s 20(b)(ii)(C) of NDPS Act	Rigorous imprisonment of 15 years with fine of Rs. 1,50,000/- in default of payment of fine additional R.I. for 3 years.
U/s 29 of NDPS Act	Rigorous imprisonment of 15 years with fine of Rs. 1,50,000/- in default of payment of fine additional R.I. for 3 years.
Both the sentences to directed to run concurrently.	

For the appellant Tummala Veketshwar Rao in CRA No. 2605 of 2025

Conviction	Sentence
U/s 29 of the NDPS Act	Rigorous imprisonment of 15 years with fine of Rs. 1,50,000/- in default of payment of fine additional R.I. for 3 years.
U/s 25 of the NDPS Act	Rigorous imprisonment of 10 years with fine of Rs. 1,00,000/- in default of payment of fine additional R.I. for 2 years.
Both the sentences to directed to run concurrently.	

4. The brief facts of the case are that, on 03.10.2021, the Intelligence Officer of Directorate of Revenue Intelligence (hereinafter called as ‘DRI’) namely Gourav Pandey (PW-5), received a secret information that, the illegal contraband (ganja) is being transported through the truck No. AP 39 TP 9706 and one Mahindra XUV vehicle is piloting it and it was going to Mathura (U.P.) from Andhra Pradesh via Bhawani Patna, Junagarh, Nawagaon (Odisha) and Gariyaband (C.G.) and the suspected vehicle are to be reached at Gariyaband at 11:00 AM to 2:00 PM in the noon.

Two independent witnesses were called at DRI office at Raipur and then the search party proceeded towards Tourenga Forest Post, Gariyaband. At about 1:30 PM, the suspected truck bearing No. AP 39 TP 9706 came there and the search party stopped it. The driver of the truck disclosed his name as Bandari Chandrashekhar and the other person disclosed his name as Bhupendra Singh. They also disclosed that the ganja is loaded in the body of the truck, which is kept under the sacs of puffed rice. It has also been disclosed by them that, along with them one Mahindra XUV 300 vehicle is there, which is piloting them, in which four persons namely, Gajesh, Dorilal, Chandraveer @ Pintu and Amit @ Jeetu had gone to take ganja and they loaded the ganja in the truck from Arakku Vishakhapatnam road and all of them are going towards Mathura under the direction of the persons sitting in the said Mahindra XUV car. Considering that the ganja was being kept under the sacs of puffed rice and for extraction of sacs of ganja, the entire body of the truck is required to be unloaded and place where the truck was stopped, was a dense forest area and single lane road and there was a risk untoward incident and inconvenience to the public, the officers of DRI asked the persons found in the truck to proceed at the office of DRI, Panchsheel Nagar, Raipur. During midst of the proceeding, they gestured towards a black coloured Mahindra XUV vehicle as their piloting vehicle. The police persons tried to stop the said piloting vehicle, but it could not stopped and ran ahead, which was being chased by the officers of DRI.

5. It is also the case of DRI that, the persons who chased the said Mahindra XUV vehicle was numbered as UP 85 BU 2060 and the said vehicle could not be stopped due to its speed and then the adjoining police stations were informed. In presence of both the accused persons, who

were found in the truck, the truck was searched and found that in the container compartment of the said truck is loaded with 39 sacs of puffed rice and under the sacs of puffed rice, the other sacs were kept. One sac out of the other sacs were marked as B-1, in which 6 packets were found. Out of those 6 packets, one is being marked as P-1 and when it was opened, it was found to be filled with ganja, which has been physically identified by its rubbing and smelling. On its examination by narcotics kit, the positive result of ganja was found. The other 5 packets of B-1 sacs were also marked as P-2 to P-6. The other sacs were marked as B-2 to B-26 and total 156 packets were found in all the 26 sacs. From all the remaining 155 packets, a small quantity was taken out, in which ganja like substance were found. On random basis, the contents of packet No. 18, 34, 57, 63, 87, 105, 125 and 149 were examined through narcotics kit, in which the contents of ganja was found positive. In the sacs of puffed rice, nothing adverse could be found. The total 156 packets found in the truck was weighed, which comes to total 833.271 kilograms. The packet No. P-1 to P-12 were opened and its contents were homogenized, which was marked as L-1. Likewise, the contents of P-13 to P-24 were marked as L-2 and in the same ratio total 13 homogenized packets were prepared, which were marked up to L-13. Two samples of 30 grams each were drawn from each packets of L-1 to L-13, which were marked as L-1/S-1 to L-13/S-1 and L-13/S-2. The packets were sealed by the official seal of DRI and duly signed by the officers. From the cabin of the truck, its registration documents were seized and it is found that the said truck No. AP 39 TP 9706 was registered in the name of Tummala Veketshwar Rao and an invoice of purchase of 41 sacs of puffed rice sold by Shriniwas Traders to Usha Traders, Bihar were also seized. The remaining ganja were refilled in the sacs and separately sealed.

6. From the office of DRI, Regional Unit, Raipur, the accused Bandari Chandrashekhar succeeded in absconding on 04.10.2021 during the search proceeding which was reported to the concerned police station Civil Lines, Raipur and on 05.10.2021 an FIR was lodged. The piloting vehicle bearing No. UP 85 BU 2060 was intercepted by the police of police station Panduka on 04.10.2021 and out of 4 persons, 2 persons, who were sitting in the truck namely Dorilal and Chandraveer @ Pintu were arrested. From the said XUV vehicle, 4 sacs were seized, which were identified to be belonged with the accused persons. These accused persons were also identified by Bhupendra Singh, who was arrested from the truck. The seized sample packets of ganja were sent to State FSL Raipur for its chemical examination, and thereafter a complaint was filed by the DRI before the learned trial Court.
7. The learned trial Court has framed charge against the accused persons Bhupendra Singh @ Bhupendra @ Bhupi, Chandraveer @ Pintu/Chintu, Amit Kumar @ Jeetu and Dorilal for the offences under Sections 8-C, 20(b)(ii)(C), 27-A and 29 of the NDPS Act. The accused persons denied the charge and claimed trial.
8. In order to prove the charge against the aforesaid accused persons, the prosecution examined as many as 12 witnesses. Statement of the accused persons under Section 313 of CRPC have also been recorded, in which they denied the circumstances that appears against them, pleaded innocence and have submitted that they have been falsely implicated in the offence.
9. After appreciation of oral as well as documentary evidence led by the DRI, the learned trial Court convicted and sentenced the 4 accused persons Bhupendra Singh @ Bhupendra @ Bhupi, Chandraveer @

Pintu/Chintu, Amit Kumar @ Jeetu and Dorilal, as have been mentioned in the earlier part of this judgment.

10. After the judgment of conviction and sentence dated 25.07.2024, passed by the learned trial Court with respect to 4 accused persons, the accused Tummala Veketshwar Rao was arrested on 22.02.2025 and he also put to trial in the said offence. The charge against him was framed on 01.10.2025 for the offence under Sections 25 and 29 of the NDPS Act and thereafter, on the same day the opportunity was given to the prosecution as well as accused Tummala Veketshwar Rao as to admission of the document, if any, under Section 294 of the CRPC and then the appellant Tummala Veketshwar Rao denied the admission of the document. Thereafter, another opportunity was granted on the same day as to show the name of the witnesses, to whom they wanted to cross-examine, who have already been examined with respect to the other 4 arrested accused persons. On 15.10.2025, learned counsel appearing for the DRI would submit that they did not want to re-examine the prosecution witnesses, who have already been examined earlier with respect to other accused persons and then on 27.10.2025 an application was filed on behalf of the appellant Tummala Veketshwar Rao that he does not want to cross-examine the witnesses, who have already been examined and cross-examined earlier by the other co-accused persons and then the case was fixed for recording of accused statement of Tummala Veketshwar Rao. On 11.11.2025, his statement was recorded under Section 351 of BNSS, 2023 (Section 313 of CRPC) and the case was fixed for final argument and after hearing the parties, the judgment was passed on 17.11.2025 convicting the appellant Tummala Veketshwar Rao for the offence under Sections 25 and 29 of the NDPS Act and

sentenced him as has been mentioned hereinabove. Hence these appeals.

11. Mr. Avinash K. Mishra, learned counsel appearing for the appellant Amit Kumar @ Jeetu (CRA No. 1924 of 2024) would submit that the prosecution has failed to prove its case beyond reasonable doubt. There are material omissions and contradictions in the evidence of prosecution witnesses. The subject vehicle truck was allegedly stopped at Tourenga Forest Post, Gariyaband, however there was no panchnama prepared and the said truck was taken to the office of DRI, Raipur which is in the distance about 150-160 kilometers. The alleged piloting vehicle was also not seized on Tourenga Forest Post, but it was allegedly seized by Panduka police station. The registration number of the piloting vehicle are also differ from the number disclosed are identified by the persons, who found in the subject truck. There is no seizure panchnama in the case that the ganja was seized from the accused persons. Though the details of the proceedings were prepared about seizure of ganja and truck, but the signature of the persons, who subsequently arrested later on, have also been obtained in the said panchnama, which itself evident that all the documents are prepared later on and are the fabricated documents. Had it been prepared on the spot or genuine documents, there would have no signature of the subsequently arrested accused persons found on the said panchnama (exhibit P-1 and P-2). He would also submit that there is no compliance of mandatory provisions of Sections 42, 50, 52-A and 57 of the NDPS Act. He would also submit that despite knowing the source of alleged ganja, the DRI has not prosecuted the persons from whom it was obtained and by whom it was carried out. It is further argued that out of two independent panch witnesses namely Radheshyam Yadav

and Varun Dev, only one witness Varun Dev was examined as PW-1. Varun Dev is the resident of village Temri, District Durg and his presence on the spot is also suspicious. The other witness Radheshyam Yadav is the resident of village Darba, District Dhamtari, whose presence on the spot is also suspicious. None of the panchnama from exhibit P-1 to P-66 were prepared Tourenga Forest Check Post.

12. It is further argued that the statement of the accused persons under Section 67 of the NDPS Act was recorded by the investigating officer while they were in custody. Their statements are inadmissible in evidence and having no legal bearing in support of the prosecution. There is absolutely non-compliance of Section 52-A(ii) of the NDPS Act. The prosecution witness Sumit Dwivedi (PW-9) who was the incharge of Malkhana admitted in his evidence that there is over writing in the document (exhibit P-46) without any countersign and such document cannot be relied upon with respect to the safe custody of seized contraband. The Executive Magistrate, who prepared the inventory has not been examined by the prosecution to prove the inventory, which is a serious lacuna on the part of the prosecution to prove its case. In such a material discrepancy in the evidence of prosecution witnesses and faulty investigation, the appellant cannot be convicted for the alleged offence and he is entitled for acquittal. He would rely upon the judgment **“Narcotics Control Bureau v. Kashif”** 2024 (11) SCC 372.
13. Mr. B.P. Singh, learned counsel appearing for the appellant Dorilal (CRA No. 1883 of 2024) and Tummala Veketshwar Rao (CRA No. 2605 of 2025) would submit that there is no evidence against the appellant Dorilal that he hatched conspiracy with the other accused persons and abated them for the alleged offence. Nothing has been seized from the appellant

Dorilal except his clothes and mobile phone. The allegation against him is that, he was piloting the truck and connected with other accused persons through mobile phone, but the call details of the said mobile phone is inadmissible in absence of sufficient prove of the nature of conversation and the CDR are not sufficient to hold him guilty for the alleged offence. The appellant was not arrested on the spot at Tourenga Forest Check Post. He would refer to the evidence of Varun Dev (PW-1), Rishabh Tiwari (PW-2), Nitin Agrawal (PW-4), Gourav Pandey (PW-5) and Sanjeet Kumar Singh (PW-12) and argued about discrepancies and laches in investigation and would claim acquittal of the accused Dorilal.

14. While arguing the case on behalf of the appellant Tummala Veketshwar Rao (CRA No. 2605 of 2025), he would argued that the appellant has made accused on the basis that he was the registered owner of the subject truck, whereas, he neither found on the spot nor any incriminating article has been seized from him. He was arrested later on after the judgment passed by learned trial Court with respect to 4 other accused persons, however no proper opportunity was provided to him to cross-examine the prosecution witnesses. Even the prosecution/DRI has not examined their witnesses with respect to the accused Tummala Veketshwar Rao. The incriminating circumstances were not put for his explanation during recording of his statement under Section 351 of BNSS (Section 313 of CRPC) and therefore, the right of the accused Tummala Veketshwar Rao is serious prejudiced. He would further submit that nothing has been seized from him and he was unaware about transportation of the contraband (ganja) and his truck was engaged in transporting of puffed rice. There is no evidence against the present appellant Tummala Veketshwar Rao that he was also actively involved in

the alleged offence or connected with other accused persons, therefore, these appellants are entitled for acquittal. He would rely upon the judgment of “**Balwinder Singh (Binda) v. Narcotics Control Bureau**” 2024 (13) SCC 734, “**Surepally Srinivas v. State of Andhra Pradesh (now State of Telangana)**” 2025 SCC Online SC 683 and “**Karnail Singh v. State of Haryana**” 2009 (8) SCC 539.

15. Mr. Hemant Gupta, learned counsel appearing for appellant Chandraveer @ Pintu/Chintu (CRA No. 1901 of 2024) by adopting the submissions made by learned counsel for the other appellants, would submit that, the appellant Chandraveer was not found in the truck from which the ganja is alleged to be seized. The allegation against the appellant Chandraveer is that, he was in the piloting vehicle Mahindra XUV, but the identification of the Mahindra XUV vehicle could not be established by the prosecution, as there is material discrepancies in its registration number and model. The said piloting vehicle is allegedly seized from Panduka police, but nothing incriminating has been recovered from the said vehicle. He would also submit that the allegation is that the present appellant along with other accused persons piloting the truck, whereas the said piloting vehicle was found much behind the said truck and in such situation, piloting cannot be possible. Had the said Mahindra XUV vehicle piloting the said truck, the said truck should following the piloting vehicle, but here the position is adverse that the piloting vehicle allegedly followed the truck. There is non-compliance of mandatory provision of the NDPS Act and the evidence available on record are not sufficient to hold the appellant guilty for the alleged offence. The prosecution has failed to prove the link through which the accused persons are connected with each other, therefore, the appellant is also entitled for acquittal.

16. Mr. Pranav Tiwari, learned counsel appearing for the appellant Bhupendra Singh @ Bhupi (CRA No. 1926 of 2024) would also argued in addition to argument raised by learned counsel for other accused persons that the prosecution has failed to prove that the appellant Bhupendra Singh @ Bhupi was in conscious and exclusive possession of the contraband (ganja), which is allegedly recovered rom the truck. The possession and ownership cannot run together. The present appellant was a helper in the truck and was not in knowledge of the subject contraband in the truck. Merely presence of the appellant in the truck cannot be presumed to be in possession of the ganja. There is no independent witness, who supported the prosecution's case and the witnesses are the police witnesses. There is material discrepancy in sampling, sealing and sending in for its chemical examination to FSL Raipur. In absence of any seal impression and specimen seal impression, it cannot be said that the mandatory provisions of the NDPS Act is complied with. Therefore, no offence against the appellant Bhupendra @ Bhupi is made out and he too is entitled for acquittal.
17. Per contra, Mr. Anumeh Shrivastava, learned counsel appearing for the respondent/DRI would submit that, the prosecution has proved its case beyond reasonable doubt. But for minor omissions or contradictions, the evidence of prosecution witnesses are reliable and sufficient to hold conviction of the accused persons for the alleged offence. All the mandatory provisions of search and seizure have duly been complied with. The sampling and sealing was done in accordance with the provisions of NDPS Act. Since, Tourenga Forest Check Post is situated in single lane road and it was a dense forest area, considering the inconvenience to the public and safety and security of the policy party as

well as the accused persons, the subject truck was taken to the office of DRI, Raipur with the consent of the accused persons, who were found in the truck. From the office of DRI, the driver of the truck Bandari Chandrashekhar fled away and still absconding, which shows the mental culpability of the persons, who found in the truck, from which ganja was recovered. He would also submit that although no panchnama was prepared at Tourenga Forest Check Post, but the truck was being taken to DRI office and no proceeding of search and seizure was conducted at Tourenga Check Post. Therefore, even if no proceeding was drawn at Tourenga Check Post, it does not affect the prosecution's case or search and seizure of ganja from the truck. The appellants were connected with each other through mobile phone and the same has been proved by their call details record that during the entire journey, they were closely connected through their mobile phones. He would also submit that, when the police party tried to stop the piloting vehicle, it ran in high speed and then the search party informed the adjoining police station and they could be arrested by the Panduka police station. The seizure of ganja was made in the procedure prescribed for the same and sampling was also drawn in accordance with law. Inventory was also prepared by the Executive Magistrate and the sample packets so drawn from the ganja seized from the truck were found to be ganja in FSL report and thus, all the necessary components for proving the offence against the accused persons have been proved by the prosecution/DRI. The accused persons could not explain, as to why they have been falsely implicated in the offence by the DRI. Thus, there are sufficient and overwhelming evidence against the appellants and their appeals are liable to be dismissed.

18. We have heard learned counsel for the respective parties and perused

the record of the trial Court with utmost circumspection.

19. There are two folds story in the prosecution case, i.e. (i) the ganja was allegedly transporting in the truck, which was stopped at Tourenga Forest Check Post, in which two persons were found, the said truck was being taken to office of DRI Raipur, which is at the distance of 150-160 kilometers and then the proceeding of search and seizure were drawn at the office of DRI Raipur, and (ii) the other four accused persons were found in the Mahindra XUV vehicle, which was allegedly piloting the truck and was intercepted by the Panduka police and no ganja was recovered from the said Mahindra XUV vehicle. Admittedly, no panchnama was prepared at Tourenga Forest Check Post.
20. PW-5, Gourav Pandey, Intelligence Officer at the office of DRI Raipur, the person who received secret information about transportation of ganja from Andhra Pradesh to Uttar Pradesh. He stated in his evidence that on 03.10.2021, he received a secret information about the transportation of ganja in the container truck bearing No. AP 39 TP 9706 and along with the said truck a Mahindra XUV 300 vehicle is also running and all of them are going to Mathura (U.P.) via Bhawani Patna, Junagarh, Nawagaon and Gariyaband and 5-6 suspected persons are there. He recorded the secret information, which is exhibit P-4. He informed it to his senior officer Roshan Gupta (PW-6), who in turn forwarded it to the Deputy Director of DRI, Nitin Agrawal (PW-4). The search party was constituted and he was appointed as the authorized officer. He called two independent witnesses Radheshyam Yadav and Varun Dev and informed them about secret information. The vehicle of the DRI was being searched by the witnesses and then they proceeded towards the suspected place of Tourenga Forest Check Post, District Gariyaband. They reached there at about

1:00 PM. At about 1:30 PM, Gourav Tiwari (PW-7) informed him that one container truck bearing registration No. AP 39 TP 9706 is coming towards check post. When the said truck reached at check post, it was being stopped and then two persons Bhupendra Singh and Bandari Chandrashekhar were found in the truck and Bandari Chandrashekhar was the driver. When the officers of DRI made inquiry, they initially informed about the puffed rice loaded in the truck, but subsequently informed about the ganja kept under the sacs of puffed rice. They also informed about the Mahindra XUV vehicle, in which four persons are traveling and its registration number is UP 85 BU 2060. At that time, they saw a black coloured Mahindra XUV vehicle coming from Odisha side, which was informed by the accused Bhupendra Singh and made gesture about the same vehicle. When the search party tried to stop the said Mahindra XUV vehicle, it was not stopped, but ran in high speed. The other members of the search party chased them.

On being interrogation, Bhupendra Singh disclosed that the 4 accused persons Gajesh, Dorilal, Chandraveer @ Pintu and Amit @ Jeetu had gone to brought ganja along with them. The ganja was loaded in the truck at about 2:00 AM in the night at 30 kilometers ahead from Arakku, Andhra Pradesh and thereafter they proceeded for Mathura (Uttar Pradesh). Bandari Chandrashekhar opened the container of the truck, in which puffed rice sacs were loaded and he informed that the ganja is kept under the sacs of puffed rice. Since the place, where the truck was stopped, is a single road and dense forest area, and there was a risk of untoward incident and inconvenience to the people, they took the said truck to the office of DRI with the consent of the two accused persons, who were found in the truck. They reached at DRI office about

3:00 AM.

On being search of the said container, 39 sacs of puffed rice were found, in which the ganja sacs were recovered. One sac of ganja was taken, which was marked as B-1, in which 6 packets wrapped with brown tape. Out of 6 packets, one packet is marked as P-1 and its contents was identified to be of ganja after rubbing and smelling. On examination through narcotics kit also, the ganja was found positive. The other packets were marked as P-2 to P-6 and other sacs were marked as B-2 to B-26 and the packets of the sacs were marked as P-7 to P-156. In all the remaining 155 packets, ganja was found. On random checking of packet No. 18, 34, 57, 63, 87, 105, 125 and 149 ganja contents were found positive. On being waived the weight of 6 packets of sac No. B-1 was found 31.984 kilograms and the total quantity of entire sacs, including its contents was found to be of 833.271 kilograms. He homogenized the contents of packet No. P-1 to P-12, which were marked as L-1, P-13 to P-24 marked as L-2 and likewise the other packets were also marked up to L-13. Two samples of 30 grams each were drawn, which were marked as L-1, S-1 to L-13, S-1 and L-1, S-2 to L-13, S-2. The packing materials and empty sacs were refilled in one sac, which were marked as PM. The sacs were sealed by seal No. 23 of DRI and the ganja and samples were seized. From the cabin of the truck, the registration paper was recovered and it is found that the said truck was registered in the name of Tummala Veketshwar Rao. The purchase invoice was also seized from the cabin of the truck with respect to purchase of puffed rice. He prepared the panchnama which is exhibit P-1.

Since, he was also the incharge of Malkhana, he made entries in the malkhana register, which is exhibit P-16 and it attested true copy is

exhibit P-16-C. On 04.10.2021, he received information from Panduka police that 4 persons were detained along with the vehicle No. UP 85 BU 2060, and then the officers of DRI took the said vehicle and accused persons to the office of DRI and then he prepared the seizure memo, which is exhibit P-17. The malkhana register with respect to keeping the XUV in the safe custody is exhibit P-18 and its attested true copy is exhibit P-18C. On 05.10.2021, he sent the sample packets L-1, S-1 to L-13, S-1 to the CFSL Bhopal through the intelligence officer Gourav Tiwari and the relevant entries in the malkhana register is exhibit P-19 and attested true copy is exhibit P-19C. On 07.10.2021, he forwarded the seized contraband and packing material to the Malkhana of GST to keep in safe custody and relevant entry is exhibit P-20. On 08.10.2021, he forwarded the puffed rice, truck and XUV vehicle to GST for keeping it in safe custody and the relevant entries in the malkhana register is exhibit P-21 and its attested true copy is exhibit P-21C. On 16.03.2022, he received the FSL report from CFSL, which is exhibit P-22. He brought the 13 sample packets with him which were received sacs from CFSL after examination and also brought other sample packets, which were marked as H-14 to H-26. He arrested the accused Chandraveer on 05.10.2021, Bhupendra Singh on 04.10.2021, Dorilal on 05.10.2021. He forwarded the details of the proceedings under Section 57 of the NDPS Act to the superior officer, which is exhibit P-27. Thereafter, he handed over the case diary on 07.10.2021 to intelligence officer Sanjeet Kumar Singh.

He also prepared the text memo of the samples, which is exhibit P-28. In the report dated 30.11.2021, ganja was found and the said report is exhibit P-29. A letter written to CGST Raipur is exhibit P-32 and P-33. The acknowledgment of Godown Incharge is exhibit P-34. A letter

received from CGST about lacks of space, which is exhibit P-36.

In cross-examination, he admitted that in the test memo of 13 samples exhibit P-28, there is no seal impression and by mistake it was left to be impressed, but it was there in the copy sent to the CFSL. He admitted that the copy sent to CFSL is not annexed in the case. He also admitted that in the document (exhibit P-7) there is no seal impression. He also admitted that in the document (exhibit P-28), there is no time and date mentioned in the dispatch column. He also admitted that the malkhana register, which he is maintaining, has not been verified from any senior officer. He also admitted that there is no endorsement of sending the specimen seal. There is no index in the malkhana register. He voluntarily explained that it is not possible in its initiation because entries are being made subsequently. He further admitted that the seal, through which the articles were sealed, have not been deposited in the Malkhana. The author of the malkhana register is not mentioned in the said register. He further admitted that in the malkhana register, the quantity of ganja is shown as 833.271 kilograms, which is the quantity before taking the sample. The said entry in the register is made after the sampling. By mistake, they could not reduce the weight of sample. He further admitted that there is no endorsement in the document (exhibit P-4) that he received secret information between 6:00 to 6:30 AM through phone. He also admitted that in the document (exhibit P-4), there is signature of 5 persons, however it is not mentioned that by whom the secret information was received. He called two independent witnesses Varun Dev and Radheshyam at a different time. Both these witnesses were found near Katora Talab and he took them to the DRI office. He has not given any notice in writing to them and there is no panchnama that

the independent witnesses were informed about secret information. He voluntarily stated that it is written in the document (exhibit P-1).

He further admitted that with respect to the secret information, he has not contacted with his other DRI offices, which are situated at Andhra Pradesh, Odisha. The panchnama of exhibit P-1 was not prepared on 03.10.2021 and he has got prepared it on his own. He further admitted that Tourenga Forest Check Post is at about 160-170 kilometers away from Raipur at the time of the incident, no one was present there. It has also not been mentioned in the panchnama as to by which vehicle, they had gone to Tourenga Forest Check Post and there is no register or logbook for the same. He also admitted that he has not prepared any spot map of Tourenga Forest Check Post and has not prepared any single document at Tourenga Forest Check Post. He also admitted that, there is no toll receipt, while proceeding towards Tourenga Forest Check Post and returning from there. He also admitted that there is no mention in the panchnama (exhibit P-1) that their vehicle was also searched in presence of the accused persons. They have not issued any notice under Section 50 of NDPS Act and Section 91 of CRPC. Except the panchnama (exhibit P-1), there is no other panchnama regarding sealing and sampling has been prepared. It is also admitted that during the search, they have not prepared any panchnama about consent of the accused persons and search of the police party by the accused persons. There is no mention in the panchnama (exhibit P-1) about reason to take the subject truck to DRI office, Raipur. Even the description of narcotics kit has not been mentioned in the panchnama (exhibit P-1). The type of apparatus either it was electronic or manual has not been mentioned in the documents. He also admitted that there is possibility of error in the

output of electronic weighing machine. In further cross-examination, he admitted that the seal has not been deposited in the malkhana. After preparing the panchnama, the signature of accused Bhupendra was taken. He further admitted that in the document (exhibit P-27) it has not been mentioned that by which mode the information was sent to his senior officer. The seized articles, which were sent to GST office was refused by the GST officer through the letter dated 05.10.2021 and then on 07.10.2021, they again sent the articles to them. He also admitted that the contents of document (exhibit P-35) is not correct. There is no document of consent from GST office to take the articles in their possession. The document (exhibit P-32) bears with the date 07.10.2021 with respect to property No.1 and 08.10.2021 with respect to other property.

He admitted that in the secret information, only the route was being informed. They stopped at Tourenga Forest Check Post on their own and it was not the part of secret information. He also admitted that as per the secret information, the suspected vehicle was to bypass Gariyaband between 11:00 AM to 14:00 PM and the DRI team could not reach Gariyaband up to 11:00 AM. He did not know as to before their reaching, how many vehicles have bypassed from there. He has not obtained any information from toll barrier about passing of the vehicles. The details of piloting vehicles and its passengers could not be seen by the DRI team. On 03.10.2021, the statement of the accused persons were not recorded and he himself has not informed any police station about fleeing the XUV vehicle. He did not tell, as to whether Panduka police conducted any search of the seized XUV vehicle or not. The articles mentioned in the document (exhibit P-17) was not seized from the

vehicle, but it was given by Panduka police, but the same has not been mentioned in the document (exhibit P-17). There is nothing incriminating material in the articles seized through the document (exhibit P-17). The independent witnesses were called by him from Marine Drive, Raipur. He also admitted that the vehicle which was seized on 04.10.2021 by DRI, nothing incriminating article was seized from it. He has not found any evidence that on 03.10.2021, when the four wheelers vehicle crossed check post, the accused Chandraveer, Dorilal or Amit Kumar were there or not. Since, Chandraveer and Dorilal have been detained by the Panduka police, they have been made accused in the present case. He did not know about the investigation or inquiry conducted by Panduka police. In the document (exhibit P-17), the vehicle number was not mentioned.

21. PW-2 Rishabh Tiwari is not a witness to the alleged interception of the truck, recovery of ganja, or the apprehension of any of the accused at Tourenga Forest Check Post on 03.10.2021. His evidence is confined only to the proceedings allegedly conducted at the DRI office on 04.10.2021, after the vehicle and accused had already been brought there. He categorically admitted that he was called by DRI officials from Marine Drive, Raipur, around 3:20–3:25 PM, and that prior to that time he had no connection whatsoever with any DRI proceedings. He further admitted that no written notice was served upon him for acting as a panch witness and that he was unaware of the identity of the persons present at the DRI office or whether they were DRI officials or outsiders. His testimony thus establishes that he is merely a formal witness to subsequent proceedings and not an independent witness to the alleged search and seizure.

PW-2 also admitted that he had no knowledge regarding which police station had seized the Mahindra XUV vehicle, when it had been seized, who was present in it at the time of seizure, or for how long the vehicle and its keys remained with the DRI officers before the search. He further admitted that Gaurav Pandey (PW-5) was already in possession of the keys of the vehicle. Significantly, he admitted that no incriminating article was recovered from the XUV vehicle, except ordinary household articles and a diary allegedly containing monetary entries. These admissions considerably weaken the prosecution case regarding the alleged piloting vehicle and the involvement of the occupants thereof.

The cross-examination further reveals serious inconsistencies in the prosecution proceedings. PW-2 admitted that when he entered the DRI office, the three accused were not present together, thereby contradicting his examination-in-chief wherein he had stated that all three were present during the confrontation proceedings. He also made contradictory statements regarding preparation of the panchnama first stating that no writing or reading took place during the proceedings and that the document was typed on a computer after completion of the proceedings, and thereafter changing his version by saying that the writing was being done simultaneously. He further admitted that he signed exhibit P-2 on the instructions of Gaurav Pandey. Such inconsistencies cast doubt on the genuineness of the panchnama proceedings. He further admitted that he had no knowledge of the proceedings dated 03.10.2021, did not know the accused prior to the incident, and that the statements of the accused were not recorded in his presence. He admitted that Panchnama (exhibit P-2) contains no mention of recording any statement of the accused, thereby contradicting the

prosecution attempt to rely upon alleged disclosures made by the accused during the proceedings. His evidence, therefore, does not furnish any independent corroboration regarding the alleged confession or disclosure attributed to the accused.

Accordingly, the evidence of PW-2 is of a formal nature and does not support the prosecution case regarding the interception of the truck, seizure of the alleged contraband, or the involvement of the appellants in the alleged conspiracy. Rather, his admissions in cross-examination expose procedural irregularities, lack of transparency in the DRI proceedings, contradictions regarding the preparation of the panchnama, absence of any incriminating recovery from the XUV vehicle, and the absence of any independent witness to the alleged disclosure by the accused. These admissions materially benefit the appellants and create serious doubt about the fairness and reliability of the prosecution case.

22. PW-4 Nitin Agarwal, who was posted as Deputy Director, DRI, Raipur, is not a witness to the actual search, seizure or recovery of the alleged contraband. He stated in his evidence that on 03.10.2021, the intelligence officer Gourav Pandey received a secret information about illegal transportation of ganja from Arakku Vally, Andhra Pradesh to Uttar Pradesh via Odisha, Chhattisgarh and Madhya Pradesh. The said secret information was produced before him and he constituted a team for search and seizure and appointed Gourav Pandey as investigating officer. The information note is exhibit P-4 and Gourav Pandey prepared the panchnama (exhibit P-1) after the proceedings. Subsequently, he issued various official communications relating to forwarding of samples to CFSL, appointment of Executive Magistrate under Section 52-A of the NDPS Act, and obtaining information from DRI units of Visakhapatnam

and Noida. He obtained the examination report of the sample packets from CFSL, Bhopal. In cross-examination, he admitted that the piloting vehicle should be ahead, but not behind the main vehicle. He did not know about the proceedings of the DRI team. From the cross-examination of PW-4, the defence are able to extract several material deficiencies in the prosecution case. PW-4 admitted that the secret information (exhibit-4) did not disclose either the registration number or the colour of the alleged piloting XUV vehicle. He further admitted that, ordinarily, an piloting vehicle is expected to move ahead to show the route and acknowledged that a vehicle travelling behind cannot guide the vehicle in front. This admission directly undermines the prosecution theory that the Mahindra XUV vehicle was piloting the truck despite allegedly following behind it.

He further admitted that he could not state when the raiding party left the DRI office, how many officers participated in the operation, or when the team reached the Forest Check Post. He also admitted that no action whatsoever was taken by him at the Forest Check Post, although he claimed to be part of the raiding team. He was unable to state the duration for which the DRI team remained at the spot, thereby demonstrating that he had no direct knowledge of the alleged interception and recovery proceedings.

The witness further admitted that no XUV vehicle had reached the Forest Check Post before the truck was stopped, and that the DRI team neither intercepted nor apprehended any XUV vehicle at the spot. Although he volunteered that an attempt was made to stop the XUV, he admitted that he did not know how many persons were travelling in the vehicle, who they were, or even the particulars of the XUV vehicle, and

that he could only ascertain such details by referring to the documents. He further admitted that Panchnama (exhibit P-1) had not been prepared by him and that he had signed the same merely at the instance of Seizure Officer Gaurav Pandey, thereby diminishing the evidentiary value of his endorsement on the panchnama.

He further admitted that the information received under exhibit P-11 disclosed that there were no Room Nos. 309 or 211 at Hotel Rajasthan Royal, Visakhapatnam and further that the accused Amit Kumar, Chandraveer and Dorilal had not stayed at Hotel Rajasthan Royal. He also admitted that the DRI Visakhapatnam Unit informed him that none of these accused had stayed at Hotel Manchu Inn during the relevant period. He further admitted that no visit report regarding Hotel Rajdhani Grand was received, that the alleged enquiry at Hotel Rajdhani Grand was based only upon an email, and no certificate under Section 65-B of the Indian Evidence Act accompanied such electronic communication. He further admitted that he himself never visited Hotel Rajdhani Grand nor conducted any investigation there. These admissions materially weaken the prosecution attempt to establish the alleged presence and movement of the accused persons at Visakhapatnam. It is also admitted by him that his location was not mentioned in exhibit P-4, that he was not present when the Investigating Officer allegedly received the secret information, and that when exhibit P-4 was placed before him, it did not contain the signatures of the witnesses. He never directed the Investigating Officer to verify the secret information and did not share the information with any other investigating agency.

He also admitted that exhibit P-4 does not mention the location of the members of the raiding team, the mode by which the information was

communicated to officers other than Roshan Gupta and Gaurav Pandey, or whether any other officers were present in the office. He admitted that exhibit P-6 does not disclose the source of the sample allegedly forwarded to CFSL, that the forwarding note (exhibit P-7) is not referred to in the list of annexures accompanying exhibit P-6, that exhibit P-6 bears no date of preparation, and that the specimen seal impression is absent in Part B of exhibit P-7. He further admitted that the authority letter (exhibit P-8) does not form part of the annexures to exhibit P-6, thereby creating substantial doubt regarding the integrity of the chain of custody and the forwarding of samples for forensic examination.

Thus, the evidence of Nitin Agrawal (PW-4), instead of corroborating the prosecution case, reveals several material omissions and contradictions concerning the secret information, the alleged piloting vehicle, the hotel investigation, the forwarding of samples, and the procedural compliance under the NDPS Act. His admissions substantially weaken the prosecution case and lend support to the defence contention that the investigation suffered from serious procedural lapses, thereby entitling the appellants to the benefit of doubt.

23. PW-6 Roshan Kumar Gupta, Senior Intelligence Officer, is not the recipient of the secret information nor the Seizure Officer. The secret information was received by Intelligence Officer Gaurav Pandey (PW-5), who forwarded the same to him, whereupon he transmitted the information to the Deputy Director, Nitin Agarwal (PW-4), for constitution of the raiding team. He claims to have been a member of the raiding team, a witness to Panchnama (exhibit P-1), to have lodged the complaint regarding the absconding of accused Bhandari Chandrashekhar, recorded the statements of accused Dorilal (exhibit P-

39 and exhibit P-40), and received the reports under Section 57 of the NDPS Act before assigning further investigation to PW-12 Sanjeet Kumar Singh. Thus, his evidence is procedural, while the substantive search and seizure was admittedly conducted by Gourav Pandey (PW-5). In cross-examination, Roshan Kumar Gupta (PW-6) discloses several admissions which materially weaken the prosecution case. He admitted that he did not receive the secret information himself, and that the information contained in exhibit P-4 did not mention either the registration number or the colour of the alleged piloting XUV vehicle. He further admitted that a piloting vehicle ordinarily means a vehicle showing the way and, therefore, would normally travel ahead of the vehicle being piloted, though it may also follow to keep watch. He further admitted that he does not remember the time when the raiding party left the DRI office, could not state how many officers actually proceeded for the raid, and acknowledged that they travelled in two vehicles. He also admitted that the decision regarding the place of interception was taken solely by Gaurav Pandey, that exhibit P-4 does not specify any particular place for interception, and that he himself was unaware of the basis on which the Forest Check Post at Tourenga was selected as the place of interception. He further admitted that the secret information merely indicated that the suspected vehicle would pass through the area between 11:00 AM and 2:00 PM, and accepted that the piloting vehicle could have already crossed the area before the DRI team reached there. He further admitted that he took no action at the Forest Check Post and did not remember the registration number of the XUV vehicle. He also admitted that he himself cannot now state what particulars Bhupendra allegedly disclosed regarding those occupants. It is also admitted by him that Panchnama (exhibit P-1) was prepared only after returning to the DRI office, and that

he signed exhibit P-1 at the DRI office itself. He further admitted that he did not sign any document at the Forest Check Post and could not even say whether any written proceedings were conducted at the place of interception. His role was confined to forwarding the information received from the Investigating Officer to his superior officer, participating as a member of the raiding team and recording the statement of accused Dorilal. He further admitted that exhibit P-4 was not addressed to him by name, and when confronted that neither his name nor the name of the officer receiving the information appeared in exhibit P-4, he sought to explain that the information had been forwarded on the basis of designation. He never enquired from Gourav Pandey (PW-5) as to when the secret information had actually been received. He further admitted that the information note (exhibit P-4) nowhere records that the matter was emergent or that delay could result in destruction or removal of the contraband. He further admitted that no movement diary or departure register is maintained by the DRI regarding visits to the place of occurrence, and although he denied that no documents were prepared at the spot, he voluntarily admitted that he did not know whether the raiding officer had actually prepared any document at the place of occurrence. His presence was only because he had been included in the team by his superior officer. He further admitted that without looking at exhibit P-27 he could not state when he had received the report under Section 57 of the NDPS Act, whether the report mentioned the absconding accused, or which accused were referred to therein. He also admitted that the DRI maintains no separate record acknowledging receipt of information or documents relating to a case.

24. PW-7 Gaurav Tiwari, Intelligence Officer, Directorate of Intelligence,

Zonal Unit, Indore. He stated in his evidence that he was present at the DRI Regional Unit, Raipur on 03.10.2021 for official work when Intelligence Officer Gaurav Pandey (PW-5) allegedly received the secret information. He was thereafter requested to assist the raiding team and became one of its members. He merely identified his signatures on Panchnama (exhibit P-1) and further stated that, on 05.10.2021, he was authorized under exhibit P-8 to carry the sealed sample to the CFSL, Bhopal, where he deposited it on 06.10.2021. Thus, his examination-in-chief is confined to his alleged participation in the raid and the forwarding of the sample for chemical examination. In cross-examination, he admitted that he had not received any secret information and did not know either the time at which the secret information was received or the nature of such information received by Gaurav Pandey. He further admitted that although he volunteered to say that he was the first person to notice the container truck, he is now unable to recall even the registration number of the truck. He merely stated that it was a container truck from Andhra Pradesh whose registration commenced with the letters "AP". He admitted that he could not state with certainty the place where the truck was stopped, and only state that it was somewhere in the Gariyaband area because he was not a resident of Chhattisgarh. He admitted that he was not present when the intelligence team actually stopped the truck and stated that he reached the place only after some time. He further admitted that he does not remember whether any written proceedings relating to the stopping of the truck were conducted at the spot, nor could he state where Panchnama (exhibit P-1) was actually prepared. He admitted that he does not remember whether exhibit P-1 was prepared at the place of occurrence or at the DRI office, and further admitted that he signed exhibit P-1 only on 04.10.2021 at the DRI office,

Raipur. He also admitted that his signatures appear only on the last page of the eight-page Panchnama (exhibit P-1) and not on every page. Exhibit P-8 authorized him to deposit the sample at CFSL, Bhopal after depositing it in the DRI storehouse, he admitted that without referring to exhibit P-8 he could not state whether it mentioned the specimen seal, seal impression or forwarding draft. He also admitted that his only role at the place of occurrence was to stand outside the place of interception, identify the suspected vehicle and inform Gaurav Pandey. He admitted that he cannot state whether any document records the fact that he had identified the truck or conveyed such information to Gaurav Pandey.

25. PW-8 Sandeep Kumar, an Intelligence Officer posted at Zonal Unit, Indore. His role was confined to assisting the raiding team, recording the statement of accused Bhupendra Singh (exhibit P-42) and preparing seizure memo (exhibit P-43). In his cross-examination, he admitted that he had no knowledge of the secret information received by PW-5, that the information did not contain any description of the alleged piloting vehicle, and that the place of interception was selected by Gaurav Pandey. He further admitted that he could not specify the exact place of interception, did not know whether any panchnama or written proceedings were prepared at the spot, did not sign any document prepared at the place of occurrence, did not take any active part in the search or seizure, and did not know where Panchnama (exhibit P-1) was prepared. He admitted that exhibit P-1 was prepared on 04.10.2021, that no separate panchnama was prepared on 03.10.2021, and that his signatures appear only on the last page of the eight-page panchnama. He also admitted that no written notice was issued to accused Bhupendra Singh before recording his statement and no incriminating article or document was recovered from

Bhupendra Singh or from any of the accused under seizure memo (exhibit P-43).

26. PW-9 Sumit Dwivedi, an Inspector in the CGST Office, Raipur, is merely the custodian of the seized property and has no role in the search, seizure or investigation. His examination-in-chief is confined to receiving the alleged contraband and the seized vehicle from the DRI for safe custody, making entries in the Malkhana Register, issuing acknowledgements under exhibit P-32, exhibit P-33 and exhibit P-34, and subsequently releasing and re-receiving the property for proceedings under Section 52-A of the NDPS Act. In cross-examination, he admitted that the Assistant Commissioner had informed the DRI through exhibit P-36 that the CGST godown lacked sufficient storage space as about 4 tonnes of ganja were already lying there, making compliance with the Disposal Manual, 2019 difficult. He further admitted that no written permission or communication from his superior officers was ever given authorising him to receive and store the seized property, and that the alleged arrangement for storing the contraband in another godown was made only on the basis of an oral request between senior officers of the DRI and CGST. He also admitted that exhibit P-32 and exhibit P-33 do not bear serial numbers, unlike exhibit P-35, and that he does not remember by what mode the alleged contraband was brought to him, stating only that it was brought by DRI officials and perhaps by truck. He admitted that the serial number column in the Malkhana Register (exhibit P-46) contains overwriting without any attesting initials, that exhibit P-46 initially records the quantity of ganja as 833.271 kg, whereas the updated quantity is 832.491 kg, and that exhibit P-46 does not mention that the seized sacs were sealed. He also admitted that he does not remember

whether the sacs bore the names and addresses of the accused, and that he did not receive any test memo along with the alleged contraband. He further admitted that although he received the vehicle on 08.10.2021, no receipt whatsoever was prepared or issued for the vehicle, unlike the receipts issued for the narcotic substance.

27. PW-10 Mahesh Shravan, was Head Constable posted at Regional Unit, Bhopal. He was directed to receive the CFSL report from Bhopal and to submit it at DRI, Regional Unit, Raipur and accordingly he did the same.
28. PW-11 Gaurav Jhajharia, an Intelligence Officer of the DRI, Zonal Unit, Indore. He is neither the recipient of the secret information nor the Seizure Officer, and his role was confined to being a member of the preventive team and recording the statement of accused Chandraveer (exhibit P-47). In his cross-examination, he admitted that he was not posted at the DRI Raipur office on 03.10.2021, had not received any secret information, could not say whether such information had already been received before his arrival, and was unaware of its contents except what Gaurav Pandey had informed him. He further admitted that the place of interception was selected by Gaurav Pandey, that he did not remember the number of vehicles used by the raiding party or whether any Forest Department officials were present at the spot, and, most significantly, that no written proceedings were conducted at the place of occurrence on 03.10.2021. He also admitted that he himself did not perform any independent action during the raid, was merely assisting Gaurav Pandey, that no car had stopped at the spot, and that the officers did not know who or how many persons were travelling in the alleged XUV-300 vehicle. He further admitted that his signatures appear only on the last page of the eight-page Panchnama (exhibit P-1), that the

panchnama does not separately record any act performed by him, and that no incriminating article was seized from accused Chandraveer after recording his statement.

29. PW-12 Sanjeet Kumar Singh, the Investigating Officer appointed after the initial seizure, conducted the subsequent investigation, arrested accused Amit Kumar, recorded his memorandum statement (exhibit P-52), carried out proceedings under Section 52-A of the NDPS Act, collected hotel records, bank statements, call detail records and other documentary evidence, and ultimately filed the complaint before the Special Court. However, in his cross-examination, he made several material admissions which substantially weaken the prosecution case. He admitted that he was not the Seizure Officer, he neither arrested accused Chandraveer and Dorilal nor inspected the XUV vehicle, there is no document on record showing that he brought the accused along with the XUV from Police Station Panduka to the DRI office or that the Panduka Police had apprehended them with the XUV vehicle. He further admitted that the charge-sheet does not contain any document regarding the action taken by Police Station Panduka, he was unaware of the details of the alleged phone call received by his superior officer regarding the apprehension of the accused, and before the arrest of accused Amit Kumar, Chandraveer and Dorilal, the alleged contraband had already been examined by the DRI. He admitted that no recovery whatsoever was made from accused Amit Kumar after recording his memorandum statement (exhibit P-52). He admitted that exhibit P-55 to exhibit P-58 (hotel records/e-mails) were not accompanied by any certificate under Section 65-B of the Evidence Act, the bank statements (exhibit P-62, exhibit P-63 and exhibit P-65) were neither prepared by him nor accompanied by certificates under the

Bankers' Books Evidence Act, no certificate under Section 65-B was obtained for the CDR of accused Bhupendra Singh. He also admitted that the 26 fresh samples drawn during the proceedings under Section 52-A of the NDPS Act were never sent to the CFSL for chemical examination, that the test memo (exhibit P-28) does not contain the specimen seal and the description of the seal does not mention the words "Satyamev Jayate", that the photographs of the sampling proceedings do not disclose the photographer, camera, date or time and most of them do not even clearly mention the crime number or the names of the accused. He further admitted that he did not obtain any report regarding the field testing of the contraband with the Narcotics Kit, that no panchnama regarding verification of the weighing scale was prepared, and that the destruction of the seized contraband was not carried out in the presence of independent witnesses nor was any independent panchnama prepared. These admissions reveal substantial procedural lapses in the investigation, sampling, electronic evidence and preservation of the seized material, thereby materially undermining the prosecution case and lending considerable support to the defence.

30. On the evidence extracted from the prosecution witnesses, the prosecution case suffers from fundamental infirmities which strike at the very root of the search, seizure, sampling, chain of custody and investigation. In a prosecution under the NDPS Act, where stringent punishments and reverse burden under Sections 35 and 54 operate, the prosecution is required to establish strict compliance with the mandatory statutory safeguards before the burden can shift upon the accused. Any substantial departure from the prescribed procedure creates serious doubt regarding the fairness of investigation and entitles the accused to

the benefit of doubt.

31. The evidence of PW-5 Gaurav Pandey, who is the author of the search and seizure proceedings, itself demonstrates that no proceedings whatsoever were drawn at Tourenga Forest Check Post where the truck was admittedly intercepted. He categorically admitted that no panchnama, seizure memo, spot map, consent memo, vehicle search memo, departure register, toll receipt, log book, or any document was prepared at the place of interception. The prosecution has attempted to justify the shifting of the truck to the DRI Office, Raipur on the ground of public inconvenience and safety. However, PW-5 admitted that even this reason finds no mention in Panchnama (exhibit P-1). When admittedly no proceedings were drawn at the alleged place of interception and the entire search and seizure was conducted nearly 160 kilometers away at the DRI Office, the sanctity of the alleged recovery itself becomes doubtful. The possibility of interpolation, manipulation and fabrication between the place of interception and the place where the search was ultimately conducted cannot be completely ruled out. His evidence further establishes serious violations relating to preservation and sampling of the seized contraband. He admitted that the specimen seal was never deposited in the Malkhana; no specimen seal impression accompanied the forwarding documents; exhibit P-28 (Test Memo) contains no seal impression; exhibit P-7 also does not contain the specimen seal; the forwarding memo contains neither date nor time of dispatch; and the copy allegedly containing seal impression sent to CFSL has not been produced before the Court. He further admitted that the Malkhana Register was never verified by any superior officer; the author of the register is not disclosed; there is no index maintained therein; and even after sampling,

the Malkhana Register continued to record the original weight of 833.271 kilograms instead of the reduced quantity after samples had been drawn. Such admissions completely destroy the prosecution's chain of custody and render the identity of the seized substance highly doubtful.

32. The prosecution has also failed to establish compliance with Section 52-A of the NDPS Act. Although inventory proceedings are alleged to have been conducted before an Executive Magistrate, the Executive Magistrate himself has not been examined. The inventory, certification of photographs and correctness of sampling therefore remain unproved. It is well settled that the inventory prepared under Section 52-A of the NDPS Act becomes primary evidence only after certification by the Magistrate and its due proof before the Court. In absence of examination of the Executive Magistrate, the prosecution has failed to establish the statutory safeguards contemplated under Section 52-A of the NDPS Act. The evidence further demonstrates that even the subsequent sampling proceedings were wholly unreliable. PW-12, Sanjeet Kumar Singh admitted that after drawing 26 fresh samples during inventory proceedings under Section 52-A of the NDPS Act, none of those samples were ever forwarded to CFSL for examination. Consequently, the samples allegedly certified during inventory proceedings have never been chemically examined. The prosecution has therefore failed to establish that the contraband allegedly destroyed pursuant to Section 52-A proceedings was the very same substance which had earlier been seized.
33. Another serious infirmity arises from the complete absence of any independent evidence regarding safe custody of the seized articles. Sumit Dwivedi (PW-9) admitted that the seized contraband could not

initially be accommodated in the CGST godown due to lack of space; there existed no written authorization for receiving the seized property; the alleged arrangement was merely oral; the Malkhana Register contains overwriting without authentication; and the register nowhere mentions that the seized sacs were sealed when they were received. Such admissions completely undermine the prosecution case regarding safe custody of the seized narcotic substance. Neither the seal nor the specimen seal travelled with the samples; no acknowledgment regarding specimen seal exists; no evidence shows that the seal remained intact throughout the movement of samples; and no witness proves that the samples examined by CFSL were the very same samples allegedly drawn from the seized contraband.

34. The evidence regarding the alleged piloting vehicle is equally inconsistent. The secret information (exhibit P-4) admittedly contains neither the registration number nor even the colour of the alleged XUV vehicle. Nitin Agrawal (PW-4) admitted that a piloting vehicle ordinarily travels ahead and not behind the principal vehicle. Roshan Gupta (PW-6) also admitted that a piloting vehicle normally leads the convoy. The prosecution case itself shows that the alleged XUV vehicle was behind the truck. Such evidence completely demolishes the theory of "piloting". Moreover, Gourav Pandey (PW-5) admitted that the DRI officers themselves never identified the occupants of the XUV vehicle while it allegedly crossed the Check Post. He further admitted that they became accused only because they were later detained by Panduka Police. No incriminating article whatsoever was recovered from the XUV vehicle. Rishabh Tiwari (PW-2) admitted that only ordinary household articles and one diary were found. Gourav Pandey (PW-5) also admitted that nothing

incriminating was recovered from the XUV vehicle. Thus, there exists absolutely no recovery connecting Dorilal, Chandraveer or Amit Kumar with the alleged contraband.

35. The prosecution has also failed to prove the seizure of the XUV vehicle itself. Sanjeet Kumar Singh (PW-12) admitted that no document has been filed showing that Panduka Police apprehended the accused with the XUV vehicle or handed over the vehicle to DRI. No seizure memo prepared by Panduka Police has been produced. No officer of Panduka Police has been examined. Thus, the prosecution has failed to establish the alleged interception of the XUV vehicle. The evidence of Rishabh Tiwari (PW-2), Nitin Agrawal (PW-4), Roshan Gupta (PW-6), Gourav Tiwari (PW-7), Sandeep Kumar (PW-8) and Gaurav Jhajharia (PW-11) uniformly establishes that Panchnama (exhibit P-1) was not prepared at the place of interception but at the DRI Office on the following day. Most of these witnesses admitted that they signed only the last page of the panchnama and not each page. Several witnesses admitted that they did not know where exactly the panchnama had been prepared. Such admissions seriously impair the evidentiary value of exhibit P-1. Another significant circumstance creating serious doubt is that signatures of accused persons who were arrested subsequently appear on the documents (exhibit P-1) prepared with respect to the alleged recovery made earlier. The panchnama (exhibit P-1) is prepared on 03/04.10.2021. The said panchnama was prepared on 04.10.2021, which is the entire proceedings conducted in the office of DRI, Raipur. Admittedly, at the time of preparation of panchnama (exhibit P-1), the other accused persons who were in alleged piloting vehicle, were not there and their signatures have been obtained in the said panchnama later on. From the date

mentioned just below the signatures of accused persons reflected that the signatures of Dorilal, Chandraveer was taken on 04.10.2021 and 05.10.2021. The signature of Chandraveer was also taken on 06.10.2021, which clearly shows that the documents (exhibit P-1 and P-2) were prepared at the earlier point of time and subsequently, the signatures of accused persons were taken. This circumstance probabalises the defence contention that the documents were prepared subsequently after the accused had already been apprehended and therefore cannot be treated as records of seizure. The prosecution has also failed to establish compliance with Section 57 of the NDPS Act. Gourav Pandey (PW-5) admitted that exhibit P-27 does not disclose the mode by which the report was sent to the superior officer. Roshan Gupta (PW-6) admitted that he cannot even state when such report was received. There is no acknowledgment maintained by the DRI regarding receipt of such statutory report. These admissions render compliance with Section 57 of the NDPS Act doubtful.

36. The prosecution further relies heavily upon statements allegedly recorded under Section 67 of the NDPS Act. However, admittedly such statements were recorded after the accused had been apprehended and were in the custody and complete control of DRI officers. In view of the law laid down by the Constitution Bench of the Hon'ble Supreme Court in **Tofan Singh v. State of Tamil Nadu**, (2021) 4 SCC 1 statements recorded under Section 67 from persons accused of offences under the NDPS Act are inadmissible as confessional statements and cannot form the basis of conviction. Consequently, the alleged disclosures made by the accused lose all evidentiary value.
37. The electronic evidence relied upon by the prosecution also suffers from

fatal legal defects. Sanjeet Kumar Singh (PW-12) admitted that hotel e-mails were not accompanied by certificates under Section 65-B of the Evidence Act. He further admitted that call detail records also lacked the mandatory certification in respect of at least one accused. Bank statements were neither proved by competent witnesses nor accompanied by certificates under the Bankers' Books Evidence Act. Therefore, the alleged electronic evidence connecting the accused with each other is legally inadmissible. The investigation regarding the alleged source of contraband is equally perfunctory. Although the prosecution claimed that the ganja originated from Andhra Pradesh and even disclosed the place of loading, no investigation whatsoever was conducted against the alleged suppliers. Gourav Pandey (PW-5) admitted that no coordination was made with DRI units in Andhra Pradesh or Odisha before interception. Nitin Agrawal (PW-4) admitted that the hotel investigation yielded negative results, as none of the accused had stayed in the hotels alleged by the prosecution. Thus, the prosecution has failed to establish any conspiracy or meeting of minds.

38. From the accused Dorilal, Chandraveer and Amit Kumar, no recovery has been effected. Their alleged involvement rests solely upon statements of Section 67 of the NDPS Act, call records, and the unsupported theory of piloting. Such evidence falls far short of proving criminal conspiracy under Section 29 of the NDPS Act. As regards appellant Tummala Venkateshwar Rao, the prosecution has merely established that he was the registered owner of the truck. Ownership of a vehicle by itself cannot attract liability under Section 25 of the NDPS Act unless it is affirmatively proved that the owner had knowledge that the vehicle was being used for commission of an offence or had consciously permitted such use. There

is no evidence demonstrating prior knowledge, consent or participation of the appellant. On the contrary, the truck was admittedly carrying genuine consignments of puffed rice supported by invoice documents. No evidence establishes that the owner participated in loading the contraband or maintained contact with the co-accused. The cumulative effect of these deficiencies leaves the prosecution case surrounded by grave suspicion. The interception is unsupported by proper documentation; the search and seizure were conducted far away from the place of interception; mandatory safeguards regarding sealing, sampling and custody have not been followed; the inventory proceedings under Section 52-A of the NDPS Act remain unproved; electronic evidence is inadmissible; no independent evidence establishes conspiracy; no incriminating article was recovered from the alleged piloting vehicle; the chain of custody is broken; and several prosecution witnesses have contradicted each other on material particulars. These are not mere procedural irregularities but go to the very root of the prosecution case.

39. It is trite law that offences under the NDPS Act prescribe stringent punishments and also contain statutory presumptions under Sections 35 and 54 of the NDPS Act. Consequently, strict and substantial compliance of the mandatory safeguards incorporated under the Act becomes indispensable. The burden shifts upon the accused only after the prosecution first establishes a lawful search, seizure and conscious possession through cogent, reliable and legally admissible evidence. The Hon'ble Supreme Court in **State of Punjab v. Baldev Singh**, (1999) 6 SCC 172, has held in paragraph 26 that:-

“26. The safeguard or protection to be searched in the presence of a gazetted officer or a Magistrate

has been incorporated in Section 50 to ensure that persons are only searched with a good cause and also with a view to maintain the veracity of evidence derived from such search. We have already noticed that severe punishments have been provided under the Act for mere possession of illicit drugs and narcotic substances. Personal search, more particularly for offences under the NDPS Act, are critical means of obtaining evidence of possession and it is, therefore, necessary that the safeguards provided in Section 50 of the Act are observed scrupulously. The duty to inform the suspect of his right to be searched in the presence of a gazetted officer or a Magistrate is a necessary sequence for enabling the person concerned to exercise that right under Section 50 because after *Maneka Gandhi v. Union of India* it is no longer permissible to contend that the right to personal liberty can be curtailed even temporarily, by a procedure which is not “reasonable, fair and just” and when a statute itself provides for a “just” procedure, it must be honoured. Conducting a search under Section 50, without intimating to the suspect that he has a right to be searched before a gazetted officer or a Magistrate, would be violative of the “reasonable, fair and just procedure” and the safeguard contained in Section 50 would be rendered illusory, otiose and meaningless. Procedure based on systematic and unconscionable violation of law by the officials responsible for the enforcement of law, cannot be considered to be a “fair”, just or reasonable procedure. We are not persuaded to agree that reading into Section 50, the existence of a duty on the part of the empowered officer, to intimate to the suspect, about the existence of his right to be searched in the presence of a gazetted officer or a

Magistrate, if he so requires, would place any premium on ignorance of the law. The argument loses sight of a clear distinction between ignorance of the law and ignorance of the right to a “reasonable, fair and just procedure”.

40. Similarly, in “**Noor Aga v. State of Punjab**”, (2008) 16 SCC 417, the Supreme Court has categorically held that because of the severe punishment prescribed under the Act, the procedural safeguards must receive strict interpretation and the prosecution has to prove foundational facts before the statutory presumption can operate, as held in the following paragraphs:-

“58. Sections 35 and 54 of the Act, no doubt, raise presumptions with regard to the culpable mental state on the part of the accused as also place the burden of proof in this behalf on the accused; but a bare perusal of the said provision would clearly show that presumption would operate in the trial of the accused only in the event the circumstances contained therein are fully satisfied. An initial burden exists upon the prosecution and only when it stands satisfied, would the legal burden shift. Even then, the standard of proof required for the accused to prove his innocence is not as high as that of the prosecution. Whereas the standard of proof required to prove the guilt of the accused on the prosecution is "beyond all reasonable doubt" but it is "preponderance of probability" on the accused. If the prosecution fails to prove the foundational facts so as to attract the rigours of Section 35 of the Act, the actus reus which is possession of contraband by the accused cannot be said to have been established.

91. The logical corollary of these discussions is that the guidelines such as those present in the Standing Order cannot be blatantly flouted and substantial compliance therewith must be insisted upon for so that sanctity of physical evidence in such cases remains intact. Clearly, there has been no substantial compliance with these guidelines by the investigating authority which leads to drawing of an adverse inference against them to the effect that had such evidence been produced, the same would have gone against the prosecution.

113. Justness and fairness of a trial is also implicit in Article 21 of the Constitution. A fair trial is again a human right. Every action of the authorities under the Act must be construed having regard to the provisions of the Act as also the right of an accused to have a fair trial. The courts, in order to do justice between the parties, must examine the materials brought on record in each case on its own merits. Marshalling and appreciation of evidence must be done strictly in accordance with the well-known legal principles governing the same; wherefore the provisions of the Code of Criminal Procedure and the Evidence Act must be followed. Appreciation of evidence must be done on the basis of materials on record and not on the basis of some reports which have nothing to do with the occurrence in question.”

41. The Hon'ble Supreme Court in **Ashok v. State of Madhya Pradesh**, (2011) 5 SCC 123, observed that failure to establish safe custody and an unbroken chain of possession materially affects the prosecution case.
42. The evidence further discloses substantial non-compliance of the mandatory provisions contained in Sections 42, 50 and 52-A of the NDPS

Act. Though the prosecution asserts that secret information was reduced into writing, there is no satisfactory evidence regarding its proper communication in the manner contemplated under Section 42. There is no endorsement regarding urgency or impossibility of obtaining warrant. The place of interception was admittedly not mentioned in the secret information. In the case of “**Karnail Singh v. State of Haryana**” 2009 (8) SCC 539, the Hon'ble Supreme Court has held that:-

“35. In conclusion, what is to be noticed is that Abdul Rashid (2000) 2 SCC 513 did not require literal compliance with the requirements of Sections 42(1) and 42(2) nor did Sajan Abraham (2001) 6 SCC 692 hold that the requirements of Sections 42(1) and 42(2) need not be fulfilled at all. The effect of the two decisions was as follows:

(a) The officer on receiving the information [of the nature referred to in sub-section (1) of Section 42] from any person had to record it in writing in the register concerned and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of clauses (a) to (d) of Section 42(1).

(b) But if the information was received when the officer was not in the police station, but while he was on the move either on patrol duty or otherwise, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be feasible or practical to take down in writing the information given to him, in such a situation, he could take action as per clauses (a) to (d) of Section 42(1) and thereafter, as soon as it is practical, record the information in writing and

forthwith inform the same to the official superior.

(c) In other words, the compliance with the requirements of Sections 42(1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is, after the search, entry and seizure. The question is one of urgency and expediency.

(d) While total non-compliance with requirements of sub-sections (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance with Section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending of a copy of such information to the official superior forthwith, may not be treated as violation of Section 42. But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of Section 42 of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of Section 42 of the Act. Whether there is adequate or substantial

compliance with Section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to Section 42 by Act 9 of 2001.”

43. Even assuming Section 50 may not strictly apply to search of a vehicle, the procedural safeguards embodied in Sections 42 and 52-A continue to remain mandatory. In “**Union of India v. Mohanlal**”, (2016) 3 SCC 379, the Hon'ble Supreme Court emphatically held that preparation of inventory, certification by Magistrate and sampling under Section 52-A constitute mandatory safeguards intended to preserve the sanctity of seized narcotic substances and held that:-

“15. It is manifest from Section 52-A(2)(c) (supra) that upon seizure of the contraband the same has to be forwarded either to the officer-in-charge of the nearest police station or to the officer empowered under Section 53 who shall prepare an inventory as stipulated in the said provision and make an application to the Magistrate for purposes of (a) certifying the correctness of the inventory, (b) certifying photographs of such drugs or substances taken before the Magistrate as true, and (c) to draw representative samples in the presence of the Magistrate and certifying the correctness of the list of samples so drawn.

16. Sub-section (3) of Section 52-A requires that the Magistrate shall as soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officer-in-charge of the police station or the officer empowered, the officer concerned is in law duty-bound to approach the Magistrate for the purposes mentioned above including grant of permission to draw representative samples in his

presence, which samples will then be enlisted and the correctness of the list of samples so drawn certified by the Magistrate. In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct.

17. The question of drawing of samples at the time of seizure which, more often than not, takes place in the absence of the Magistrate does not in the above scheme of things arise. This is so especially when according to Section 52-A(4) of the Act, samples drawn and certified by the Magistrate in compliance with sub-sections (2) and (3) of Section 52-A above constitute primary evidence for the purpose of the trial. Suffice it to say that there is no provision in the Act that mandates taking of samples at the time of seizure. That is perhaps why none of the States claim to be taking samples at the time of seizure.

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19. Mr Sinha, learned Amicus Curiae, argues that if an amendment of the Act stipulating that the samples be taken at the time of seizure is not possible, the least that ought to be done is that it be obligatory for the officer conducting the seizure to apply to the Magistrate for samples and certification, etc. without any loss of time. The officer conducting the seizure is also obliged to report the act of seizure and the making of the application to the superior officer in writing so that there is a certain amount of accountability in the entire exercise, which as at present gets neglected for a variety of reasons. There is in our opinion no manner of doubt that the seizure of the

contraband must be followed by an application for drawing of samples and certification as contemplated under the Act. There is equally no doubt that the process of making any such application and resultant sampling and certification cannot be left to the whims of the officers concerned. The scheme of the Act in general and Section 52-A in particular, does not brook any delay in the matter of making of an application or the drawing of samples and certification. While we see no room for prescribing or reading a time-frame into the provision, we are of the view that an application for sampling and certification ought to be made without undue delay and the Magistrate on receipt of any such application will be expected to attend to the application and do the needful, within a reasonable period and without any undue delay or procrastination as is mandated by sub-section (3) of Section 52-A (supra). We hope and trust that the High Courts will keep a close watch on the performance of the Magistrates in this regard and through the Magistrates on the agencies that are dealing with the menace of drugs which has taken alarming dimensions in this country partly because of the ineffective and lackadaisical enforcement of the laws and procedures and cavalier manner in which the agencies and at times Magistracy in this country addresses a problem of such serious dimensions.

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31. To sum up we direct as under:

31.1. No sooner the seizure of any narcotic drugs and psychotropic and controlled substances and conveyances is effected, the same shall be

forwarded to the officer in charge of the nearest police station or to the officer empowered under Section 53 of the Act. The officer concerned shall then approach the Magistrate with an application under Section 52-A(2) of the shall be allowed by the Magistrate as soon as may be required under sub-section (52-A, as discussed by us in the body of this judgment under the heading "seizure and sampling". The sampling shall be done under the supervision of the Magistrate as discussed in Paras 15 to 19 of this order.

31.2. The Central Government and its agencies and so also the State Governments shall within six months from today take appropriate steps to set up storage facilities for the exclusive storage of seized narcotic drugs and psychotropic and controlled substances and conveyances duly equipped with vaults and double-locking system to prevent theft, pilferage or replacement of the seized drugs. The Central Government and the State Governments shall also designate an officer each for their respective storage facility and provide for other steps, measures as stipulated in Standing Order No. 1 of 1989 to ensure proper security against theft, pilferage or replacement of the seized drugs.

31.3. The Central Government and the State Governments shall be free to set up a storage facility for each district in the States and depending upon the extent of seizure and store required, one storage facility for more than one districts.

31.4. Disposal of the seized drugs currently lying in the Police Malkhanas and other places used for storage shall be carried out by the DDCs

concerned in terms of the directions issued by us in the body of this judgment under the heading "disposal of drugs".

44. Similarly, in **Yusuf @ Asif v. State**, (2023) 13 SCC 1, the Supreme Court reiterated that compliance with Section 52-A is not an empty formality and substantial deviation from the prescribed procedure seriously affects the prosecution case.
45. In the case of “**Surepally Srinivas v. State of Andhra Pradesh (now State of Telangana)**” 2025 SCC Online SC 683, the Hon'ble Supreme Court has held that:-

“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).”

46. The prosecution has also failed to satisfactorily explain the absence of independent witnesses to the alleged search and seizure. The witnesses were not residents of the place of occurrence. They were admittedly brought from Raipur and joined subsequently. Rishabh Tiwari (PW-2) himself admitted that he had no knowledge regarding the alleged interception, recovery or seizure at Tourenga Check Post. Thus, the prosecution lacks any independent corroboration of the alleged recovery.

47. The cumulative effect of the aforesaid deficiencies cannot be ignored by treating each irregularity in isolation. The law is well settled that where several suspicious circumstances cumulatively create reasonable doubt regarding the fairness of search and seizure, benefit thereof must necessarily enure to the accused. In **Noor Aga (supra)**, the Hon'ble Supreme Court held that the higher degree of proof expected from the prosecution. Likewise, in **Tofan Singh (supra)**, it has been authoritatively held that statements recorded under Section 67 of the NDPS Act are inadmissible as confessional statements against an accused and cannot by themselves sustain conviction. Once such statements are excluded from consideration, the remaining evidence suffers from serious procedural defects and fails to establish conscious possession or conspiracy beyond reasonable doubt.
48. Relying the judgment of **Tofan Singh (supra)**, the Hon'ble Supreme Court in the case of "**Balwinder Singh (Binda) v. Narcotics Control Bureau**" 2024 (13) SCC 734 has held that:

"(a) Significance of Toffan Singh (supra) decision

16. We have perused the impugned judgment and the records and given our thoughtful consideration to the arguments advanced by the learned counsel for the parties.

17. When the present matter was considered by the High Court in the year 2013, it had accepted the arguments advanced by the learned counsel for the respondent NCB that officers of the Department of Revenue Intelligence who are

vested with the powers of an officer in charge of the police station under Section 53 of the Act, are not "police officers" within the meaning of Section 25 of the Evidence Act and therefore held that a confessional statement of a person accused of an offence under the NDPS Act recorded by such an officer in the course of investigation, is admissible against him. The said argument had found favour with the High Court in the light of the decisions of this Court in Kanhaiyalal and Raj Kumar Karwal wherein it was held that a confession made by the accused before an officer of the NCB, is admissible in evidence because the said officer cannot be treated as a "police officer" within the meaning of Section 25 of the Evidence Act. It was further held that a conviction can be maintained on the sole confession made by an accused under Section 67 of the NDPS Act. A similar view taken by this Court in Ram Singh, was cited by the High Court to fortify its decision that the confessions made by the appellants herein before the officers of the NCB were admissible in evidence, being of voluntary nature.

18. However, much water has flown under the bridge since the year 2013. In the year 2020, a three-Judge Bench of this Court answered a reference order of a Division Bench in Tofan

Singh v. State of T.N. and re-examined the ratio of Kanhaiyalal 20 and Raj Kumar Karwal to decide as to whether the officer investigating a matter under the NDPS Act would qualify as a "police officer" or not. The other related issue which was examined by the larger Bench in Tofan Singh was whether the statement recorded by the investigating officer under Section 67 of the NDPS Act can be treated as a confessional statement or not even if the officer is not treated as a "police officer".

19. After a detailed examination of the legal position in the light of the provisions of the NDPS Act, vis-à-vis revenue statutes like the Customs Act, 1962 and the Central Excise Act, 1944 as also the CrPC and Section 25 of the Evidence Act, the majority decision authored by Nariman, J., arrived at the following conclusion: (Tofan Singh case, SCC p. 141, paras 155-58)

"155. Thus, to arrive at the conclusion that a confessional statement made before an officer designated under Section 42 or Section 53 can be the basis to convict a person under the NDPS Act, without any non obstante clause doing away with Section 25 of the Evidence Act, and without any safeguards, would be a direct infringement of the constitutional guarantees contained in Articles 14,

20(3) and 21 of the Constitution of India.

156. The judgment in Kanhaiyalal then goes on to follow Raj Kumar Karwal in paras 44 and 45. For the reasons stated by us hereinabove, both these judgments do not state the law correctly, and are thus overruled by us. Other judgments that expressly refer to and rely upon these judgments, or upon the principles laid down by these judgments, also stand overruled for the reasons given by us.

157. On the other hand, for the reasons given by us in this judgment. the judgments of Noor Aga and Nirmal Singh Pehlwan v. Inspector, Customs are correct in law.

158. We answer the reference by stating:

158.1. That the officers who are invested with powers under Section 53 of the NDPS Act are "police officers" within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

158.2. That a statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence

under the NDPS Act." (emphasis supplied)

20. In view of the aforesaid decision that declares that any confessional statement made by an accused to an officer invested with the powers under Section 53 of the NDPS Act, is barred for the reason that such officers are "police officers" within the meaning of Section 25 of the Evidence Act, a statement made by an accused and recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.

(b) Effect of Tofan Singh (supra) verdict on Balwinder Singh's case

21. Now that it has been declared in Tofan Singh case that the judgments in *Kanhaiyalal v. Union of India*, (2008) 4 SCC 668 and *Raj Kumar Karwal* did not state the correct legal position and they stand overruled, the entire case set up by the prosecution against Balwinder Singh, collapses like a house of cards. It is not in dispute that Balwinder Singh was not apprehended by the NCB officials from the spot where the naka was laid and that Satnam Singh alone was apprehended in the Indica car. The version of the prosecution is that after Satnam Singh was arrested, his statement was recorded under Section 67 of the NDPS Act wherein he ascribed

a specific role to the co-accused- Balwinder Singh and the Sarpanch. The NCB officers claimed that they were on the lookout for both of them since they had managed to run away from the spot. While Sarpanch could not be apprehended, the NCB officers learnt from reports in the newspaper that Balwinder had been arrested by Amritsar Police in an NDPS case and was lodged in Central Jail, Amritsar. Permission was taken from the court concerned to take Balwinder Singh into custody in the instant case and he was arrested. A notice was served on him under Section 67 of the NDPS Act and his statement was recorded. Treating his statement as a confessional statement, Balwinder Singh was arrested.

22. Once the confessional statement of the co-accused, Satnam Singh recorded by the NCB officers under Section 67 of the NDPS Act, who had attributed a role to Balwinder Singh and the subsequently recorded statement of Balwinder Singh himself under Section 67 of the NDPS Act are rejected in the light of the law laid down in Tofan Singh, there is no other independent incriminating evidence that has been brought to the fore by the prosecution for convicting Balwinder Singh under the NDPS Act. On ignoring the said confessional statements (Exts. PW-1/B

and P-17) recorded before the officers of the NCB in the course of the investigation, the vital link between Balwinder Singh and the offence for which he has been charged snaps conclusively and his conviction order cannot be sustained.

23. As a result of the above discussion, we are of the opinion that Balwinder Singh deserves to be acquitted of the charge of being in conscious possession of commercial quantity of heroin under the NDPS Act. Ordered accordingly.”

49. It is a settled principle of criminal jurisprudence that suspicion, however grave, can never substitute proof. Where the prosecution evidence itself gives rise to substantial doubts regarding the legality of search, genuineness of seizure, integrity of sampling, preservation of seized material and compliance with mandatory statutory safeguards, the accused are entitled to the benefit of doubt. Reference may also be made to “**Sharad Birdhichand Sarda v. State of Maharashtra**”, (1984) 4 SCC 116, wherein the Hon'ble Supreme Court reiterated that where two views are possible, the one favourable to the accused must be adopted.
50. In view of the foregoing discussion, this Court is of the considered opinion that the prosecution has failed to prove beyond reasonable doubt that the alleged recovery of 833.271 kilograms of ganja was effected in a fair, transparent and legally sustainable manner. The admitted absence of any proceedings at Tourenga Forest Check Post, non-preparation of any panchnama at the place of interception, transportation of the truck to the DRI Office situated about 150 kilometers away before conducting search and seizure, subsequent joining of independent witnesses after

preparation of the panchnama, appearance of signatures of subsequently arrested accused persons on exhibit P-1, absence of separate search, seizure, sealing and sampling panchnamas, serious defects in preservation of seal and chain of custody, non-compliance with Sections 42 and 52-A of the NDPS Act, together with several material omissions and contradictions in the testimony of prosecution witnesses, cumulatively create grave and reasonable doubt regarding the truthfulness of the prosecution version. These are not mere procedural irregularities but foundational defects striking at the root of the prosecution case and rendering the alleged recovery itself doubtful.

51. Accordingly, all the criminal appeals deserve to be and are hereby **allowed**. The impugned judgments of conviction and orders of sentence dated 25.07.2024 and 17.11.2025, passed by the learned Special Judge (NDPS Act), Raipur in Special NDPS Case No. 33 of 2022, are hereby **set aside**. The appellants are **acquitted** of all the charges framed against them by extending to them the benefit of doubt.
52. The appellants who are in custody, shall be released forthwith, if not required in any other case.
53. Keeping in view the provisions of Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the appellants- **Dorilal** (in CRA No. 1883 of 2024), **Chandraveer @ Pintu/Chintu** (in CRA No. 1901 of 2024) **Amit Kumar @ Jeetu** (in CRA No. 1924 of 2024), **Bhupendra Singh @ Bhupi** (in CRA No. 1926 of 2024) and **Tummala Veketshwar Rao** (in CRA No. 2605 of 2025) are directed to furnish a personal bond for a sum of Rs. 50,000/- each with one surety in the like amount before the Court concerned, which shall be effective for a period of six months along with an undertaking that in the event of filing of Special Leave Petition against

the instant judgment or for grant of leave, the aforesaid appellant, on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

54. Before parting with the matter, this Court is constrained to record its dissatisfaction and strong disapproval of the manner in which the investigation has been conducted by the Directorate of Revenue Intelligence. The record reveals not merely procedural irregularities but a systematic disregard of the mandatory safeguards incorporated under the NDPS Act. The investigation suffers from glaring lapses at every material stage, including failure to prepare proceedings at the place of interception, non-compliance with the statutory requirements under Sections 42, 52-A and 57 of the NDPS Act, serious deficiencies in the search, seizure, sampling and sealing process, failure to preserve the sanctity of the chain of custody, and preparation of documents which, in view of the evidence on record, have become highly doubtful. These are not mere technical defects but violations of statutory safeguards repeatedly held by the Hon'ble Supreme Court to be mandatory in nature. Such conduct demonstrates a disturbing degree of casualness and indifference by officers entrusted with extraordinary powers under one of the most stringent penal statutes. Investigations under the NDPS Act demand the highest standards of fairness, professionalism and strict adherence to the procedure established by law, and any deviation therefrom not only jeopardizes the rights of the accused but also seriously undermines the credibility of the criminal justice system and frustrates the very object of the Act.
55. What further shocks the conscience of this Court is the admitted fact that one of the principal accused, Bandari Chandrashekhar @ Pintu, succeeded in escaping from the custody of the DRI office itself during the

course of investigation. If an accused allegedly involved in the trafficking of commercial quantity of narcotic drugs can escape from the premises of the investigating agency, it reflects a complete collapse of vigilance, supervision and institutional discipline within the agency. Such an incident, when viewed together with the multiple statutory violations noticed in the present case, presents a deeply disturbing picture of the manner in which the investigation was handled. This Court cannot permit such serious lapses to pass unnoticed.

56. Accordingly, the Registry is directed to forthwith forward a copy of this judgment to the Director General, Directorate of Revenue Intelligence, New Delhi, for his personal attention. The Director General shall cause a comprehensive inquiry into the conduct of all the officers responsible for supervising the investigation, including the circumstances leading to the escape of the accused from the DRI office, fix accountability upon the erring officials, and take appropriate action in accordance with law. The Director General shall also ensure that appropriate institutional safeguards, supervisory mechanisms and periodic training programmes are put in place so that investigations under the NDPS Act are conducted hereafter with the degree of care, fairness and strict statutory compliance expected of a premier national investigating agency.
57. Registry is directed to transmit the trial Court record along with a copy of this order to the Court concerned forthwith for necessary information and compliance.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

HEAD NOTE

The mandatory safeguards governing search and seizure under the **Narcotic Drugs and Psychotropic Substances Act, 1985** must be strictly complied with. Any non-compliance, in view of the stringent provisions of the Act and the extraordinary powers vested in the officers, vitiates the prosecution case by jeopardizing the rights of the accused and undermining the fairness of the criminal justice system.