



2026:CGHC:11870

NAFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRA No. 44 of 2005****Judgment Reserved on 24.02.2026****Judgment Delivered on 12.03.2026**

Mahesh Jagat @ Thuthu, S/o. Trilochan Jagat, Aged about 44 years, R/o. Village Rupnagar Kumhari, Uriya Mohalla, Chuki Kumhari, District Durg (CG)  
... **Appellant(s)**

**versus**

State Of Chhattisgarh Through P.S. Kumhari, District Durg (CG)  
... **Respondent(s)**

For Appellant (s)	:	Mr. Mayank Gupta, Advocate
For Respondent(s)	:	Mr. Anant Bajpai, Panel Lawyer

**Hon'ble Shri Justice Narendra Kumar Vyas****CAV Judgement**

1. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 02.04.2009 passed by Special Judge(NDPS) Act, Durg District Durg (C.G.) in NDPS Special Case No. 11/2004, wherein the said court convicted the appellant for commission of offence under 20(B) of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short "the Act, 1985") and sentenced him to undergo R.I. for 5 years and to pay fine of Rs. 50,000/- in default of payment of fine to undergo further R.I. for one year.



2. Case of the prosecution, in brief is that on 10.05.2004 in-charge inspector had received secret information that the accused kept illegal contraband Ganja in his house for sale. On the secret information, Inspector prepared *Mukhbir* panchanan (Ex.P-3) which was duly intimated to C.S.P. Chhavani thereafter, CSP Chhavani proceeded to the place of occurrence along with Sub-Inspector (PW-5) and police personnel. The prosecution called Shantilal Tandi for preparing weight panchanama and called the witnesses. The SHO gave his personal search to the witnesses. Thereafter, the appellant was searched by the SHO (PW-5) but no illegal substance was seized from him. Subsequently, SHO (PW-5) after completing all the legal formalities, searched the house of the appellant and during search 5 KG contraband Ganja with leaves and seeds were found in a white colour plastic bag inside steel drum, 3.5 Kg of Ganja with leaves and seeds were found in a white colour plastic bag inside circular tin box and about 230 pieces of contraband Ganja was kept in white colour plastic bag weighing about 2 Kg, as such total weight of whole contraband Ganja 10 KG and 500 Grams. The weight panchnama and seizure panchnama were prepared before the witnesses. 50-50 grams each of three sample packets were taken out from whole contraband ganja. Thereafter, the samples were sent for FSL Raipur for examination and seized article of contraband Ganja was handed over to police Station for keeping safe and the accused was arrested under Section 20(B) of the NDPS Act. After completing the investigation in the case, chare sheet was filed before the Special Judge NDPS Act which was registered as NDPS Special Case No. 11/2004.



3. Learned trial Court after appreciation of material and evidence has recorded its finding that the prosecution is able to prove its case beyond reasonable doubt and the contraband Ganja was seized from the house which was in illegal possession of the appellant wherein he has kept illegal contraband ganja about 10 KG and 500 grams which is more than small quantity but less than commercial quantity and has convicted the appellant as detailed above.
4. In order to establish the charge against the appellant, the prosecution examined as many as 7 witnesses. The statement of the appellant was recorded under Section 313 CrPC in which he denied the material appearing against him and stated falsely implication in the case.
5. Learned counsel for the appellant would submit that along with seized Ganja, leaves and flowers will be counted by the prosecution towards measurement which is wrong appreciation of law, as such finding recorded by the Special Judge that seized article is more than small quantity but less than commercial quantity is perverse, illegal and liable to be set aside by this Court. He would further submit that there was serious doubt regarding place of occurrence as the appellant is having two houses in his possession, as such the prosecution is unable to prove as to what contraband ganja was seized from which house. He would further submit that the *pancha* witnesses have not supported the case of the prosecution and has turned hostile, therefore, there is doubt about the seizure of contraband ganja and resident of the appellant. He would further submit that there is violation of guidelines issued by the Government of India with regard to sampling and the prosecution has mixed all the contains which have been recovered from



three other different places, as such it cannot be said that in every contain seized material was ganja and on this count alone the prosecution case becomes doubtful. He would further submit that Sub Inspector (PW-5) in his evidence has admitted that he has not described as to what quantity of leaves and flower was seized with Ganja, therefore, quantity of 10 KG and 500 is doubtful and he would pray that quantity of contraband Ganja is less than 10 KG, therefore, he would pray for allowing the appeal as the prosecution was unable to prove its case beyond reasonable doubt and alternatively he would pray that the jail sentence may be reduced to the period already undergone by him, as he remained in jail during trial and before releasing on bail by this Court 9 months and 6 days. To substantiate this submission, he referred to the judgment of this Court in **CRA No. 1516 of 2016** in the case of **Dilip Kaser vs. State of Chhattisgarh decided on 30.07.2025**.

6. On the other hand, learned State counsel would submit that even if the seizure witnesses and *panch* witnesses have turned hostile and have not supported the case of the prosecution still the prosecution case can be proved by the statement of the Investigation Officer which in the present case has been proved by the prosecution beyond reasonable doubt by examining I.O.. He would further submit that even the witnesses have turned hostile on a particular point but they have admitted their signature in all the seizure memos, therefore it cannot be said that they have absolutely not supported the case of the prosecution. He would lastly submit that even the I.O. was extensively cross examined by the defense counsel but they are unable to rebut the said finding that the contraband ganja was seized from



the house of the accused and there is no dispute about the identification of the place of occurrence. He would further submit that even if the submission made by counsel for the appellant that the appellant has two houses and it is for him to rebut that the house from where the ganja was sized was not in his exclusive possession which he miserably failed to discharge his burden, as such finding recorded by the Special Judge is legal, justified and does not warrant interference by this Court and would pray for dismissal of the appeal.

7. This Court has called upon criminal antecedents of accused as reflected from the order dated 28.01.2026 passed by this Court.
8. In pursuance of this direction, the State has placed on record criminal antecedents of appellant wherein one case under Sections 457 and 380 of the IPC has been registered and one Criminal case under NDPS Act bearing Crime No. 246 of 2024 was registered before Police Station Kumhari which is pending. It has been also reported that accused has been detained in Raigarha jail Orissa in Crime No. 62/2014 under NDPS Act, at Police Station Padampur Orissa. Thus the appellant is the habitual offender.
9. I have heard learned counsel for the parties and perused the records.
10. From the submission made by the parties the point emerged for determination by this Court is whether the hostile witnesses vitiate the entire conviction if prosecution is able to prove its case beyond reasonable doubt by examining other witnesses including Investigation Officer.
11. Learned counsel for the appellant vehemently argued that Sanjay Kumar Sahu (PW-2) and Pradeep Sanyal (PW-3) have not supported the case of the prosecution as they have categorically stated that contraband ganja has



not been seized before him from the accused, as such the trial Court should not held that the prosecution is able to prove its case beyond reasonable doubt is being considered by this Court.

12. Sanjay Kumar Sahu (PW-2) has admitted in his examination by prosecution that in Ex.P-3 to Ex.P-13, he put his signature. PW-3 in his examination in chief has admitted that he has signed his signature on the instruction of Police person. Similarly, weighing witness PW-4 has also not supported the case of the prosecution but investigation officer who has conducted investigation has stated in para-5 that the contraband ganja with leaves and seeds were seized from plastic bag which was kept in steel drum in the house of accused. Similarly, in another round Tin box 3 Kg contraband ganja was seized with leaves and seeds. He has also stated that about 230 pieces of packets of contraband ganja which consists of 2 KG ganja were also recovered from the house of the appellant. This witnesses was extensively cross-examined by the defense and in para-20, he has stated that the substance was seized from the room and Mahesh Jagat/appellant has two houses which is distance of 10-15 feet. But he has sized the contraband substance from the house for which information regarding possession of contraband was received by him. He has also admitted that in Ex.P-19 and Rojnamcha Sanha from wherein 50-50 grams each of three sample packets were taken out from whole contraband ganja.
13. The accused/appellant was examined under Section 313 CrPC wherein he has taken plea of false implication in the case and denied all the allegations levelled against him. Thus from the appreciation of evidence and material on record it is quite vivid that though the panch witnesses have turned hostile



still the prosecution by examining witnesses i.e. Investigating Officer has proved that the contraband Ganja was seized from the exclusive possession of the appellant and he is unable to discharge his burden to prove the same as the witness remained affirmed despite extensive cross-examination by the defense.

14. Thus the trial Court after appreciating the evidence and material on record recorded finding of guilt of the accused by observing in para-19 that the chemical report also suggests about availability of narcotic substance at the place of occurrence and defense taken by the accused that he has two house , as such there is doubt about the place of occurrence which is also answered by the trial Court by taking into consideration the evidence of the I.O. who has categorically stated that he has contraband ganja from the house and for the same house he has received the information, therefore, the finding of conviction recorded by the Special Judge is legal, justified and in accordance with the law laid by the Hon'ble Supreme Court in the case **Bharat Aambale vs. State of Chhattisgarh reported in 2025 (8) SCC 452** wherein the Hon'ble Supreme Court has held as under

56. We summarize our final conclusion as under: -

56.1- Although Section 52A is primarily for the disposal and destruction of seized contraband in a safe manner yet it extends beyond the immediate context of drug disposal, as it serves a broader purpose of also introducing procedural safeguards in the treatment of narcotics substance after seizure inasmuch as it provides for the preparation of inventories, taking of photographs of the seized substances and drawing samples therefrom in the presence and with the certification of a magistrate. Mere drawing of samples in presence of a gazetted officer would not constitute sufficient compliance of the mandate under Section 52 A sub-section (2) of the NDPS Act.



56.2 Although, there is no mandate that the drawing of samples from the seized substance must take place at the time of seizure as held in Mohanlal (supra), yet we are of the opinion that the process of inventorying, photographing and drawing samples of the seized substance shall as far as possible, take place in the presence of the accused, though the same may not be done at the very spot of seizure.

56.3 Any inventory, photographs or samples of seized substance prepared in substantial compliance of the procedure prescribed under Section 52 A of the NDPS Act and the Rules / Standing Order(s) thereunder would have to be mandatorily treated as primary evidence as per Section 52 A sub-section (4) of the NDPS Act, irrespective of whether the substance in original is actually produced before the court or not.

56.4 The procedure prescribed by the Standing Order(s) / Rules in terms of Section 52 A of the NDPS Act is only intended to guide the officers and to see that a fair procedure is adopted by the officer in-charge of the investigation, and as such what is required is substantial compliance of the procedure laid therein.

56.5 Mere non-compliance of the procedure under Section 52A or the Standing Order(s) / Rules thereunder will not be fatal to the trial unless there are discrepancies in the physical evidence rendering the prosecution's case doubtful, which may not have been there had such compliance been done. Courts should take a holistic and cumulative view of the discrepancies that may exist in the evidence adduced by the prosecution and appreciate the same more carefully keeping in mind the procedural lapses.

56.6 If the other material on record adduced by the prosecution, oral or documentary inspires confidence and satisfies the court as regards the recovery as-well as conscious possession of the contraband from the accused persons, then even in such cases, the courts can without hesitation proceed to hold the accused guilty notwithstanding any procedural defect in terms of Section 52A of the NDPS Act.

56.7 Non-compliance or delayed compliance of the said provision or rules thereunder may lead the court to drawing an adverse inference against the prosecution, however no hard and fast rule can be laid down as to when such inference may be drawn, and it would all depend on the peculiar facts and circumstances of each case.

56.8 Where there has been lapse on the part of the police in either following the procedure laid down in Section 52 A of the NDPS Act or the prosecution in proving the same, it will not be appropriate for the court to resort to the statutory presumption of commission of an offence from the possession of illicit material under Section 54 of the NDPS Act, unless the court is



otherwise satisfied as regards the seizure or recovery of such material from the accused persons from the other material on record.

56.9 The initial burden will lie on the accused to first lay the foundational facts to show that there was non-compliance of Section 52A, either by leading evidence of its own or by relying upon the evidence of the prosecution, and the standard required would only be preponderance of probabilities.

56.10 Once the foundational facts laid indicate non-compliance of Section 52A of the NDPS Act, the onus would thereafter be on the prosecution to prove by cogent evidence that either (i) there was substantial compliance with the mandate of Section 52A of the NDPS Act OR (ii) satisfy the court that such non-compliance does not affect its case against the accused, and the standard of proof required would be beyond a reasonable doubt.

15. Accordingly point of determination is answered against the appellant.
16. Thus from above factual and legal matrix, it is quite vivid that the learned Special Judge has recorded well merit reasoning after appreciating the material on record which does not warrant interference by this Court, therefore, the appeal deserves to be dismissed.
17. Further submission of the appellant that the appellant remained in jail for 9 months and 6 days, therefore, sentence be reduced to the period already undergone by him is being considered.
18. This Court to ascertain the criminal antecedents of the appellant has called upon the report which detailed above shows that the appellant is already involved in the offences of NDPS Act, therefore, I am not unmindful of the appellant's circumstances, the NDPS Act prescribes minimum mandatory sentences for possession of lesser than commercial quantity but greater than small quantity with rigorous imprisonment terms which may be extended to 10 years and with fine which may be extended to Rs. 1,00,000/-. It is well settled law that offences under NDPS Act are offences



against the society and it is well settled law that criminals dealing in NDPS are spoiling the career of young youths who are wealth of Nation for personal commercial benefit. It is well settled law that Court should be very conscious while dealing criminal offences relating to public at large. NDPS cases are criminal cases against society at large. In view of of above stated facts it is held that meticulous examination of oral as well as documentary evidence is essential in present case in the ends of justice and for the betterment of public at large, therefore, submission made by the learned counsel for the appellant that sentence be reduced to the period already undergone is misconceived and deserves to be rejected and it is rejected.

19. For the said reasons, I find no infirmity in the impugned judgment of the Special Judge. The conviction and sentence imposed by the Special Judge is affirmed by this Court which does not call for interference. Accordingly, the appeal being devoid of merit and is liable to be and it is hereby dismissed.
20. It is reported that the appellant is on bail, his bail bond shall stand cancelled. He is directed to surrender before the trial Court within two months from the date of judgment passed by this Court to serve out the remaining part of the jail sentence as awarded by this Court. In case, the appellant fails to surrender, the Police Authorities are directed to arrest him and send a compliance report to this Court.

Sd/-  
**(Narendra Kumar Vyas)**  
**Judge**