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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 1869 of 2008

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK Sd/-

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Approved for Reporting	Yes	No
	✓	

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STATE OF GUJARAT
Versus
GANPATRAM SON OF AMRAJI VISHNOI (DHAYAL) & ANR.

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Appearance:
MS JYOTI BHATT, ADDL.PUBLIC PROSECUTOR for the Appellant(s) No. 1
MR TUSHAR CHAUDHARY(5316) for the Opponent(s)/Respondent(s) No. 1,2
RULE NOT RECD BACK for the Opponent(s)/Respondent(s) No. 2

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CORAM:**HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK**

Date : 12/08/2026

JUDGMENT

1. The appellant- State of Gujarat has preferred this appeal under Section 378(1)(3) of the Code of Criminal Procedure, 1973 against the judgment and order of acquittal dated 18.03.2008 passed by the learned Additional Sessions Judge, Fast Track Court No.3, Diyodar (hereinafter be referred to as “the Trial Court”) in Special (NDPS) Case No.55 of 2007 whereby the Trial Court has acquitted the respondent accused from the charges levelled under Sections 17-B and 22-B of the Narcotics Drugs and Psychotropic Substance Act, 1985 (hereinafter be referred to as the “N.D.P.S.

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Act")

2. The facts giving rise to present appeal are that the complainant, Bhailalbhai Jagjivanbhai, P.I., L.C.B., Palanpur, registered a complaint against the present accused persons with Diyodar Police Station, which was registered as II-CR No.3017/2007. It is the case of the prosecution that on 16.02.2007, the complainant along with other police staff members, was proceeding from Tharad to Jetda for investigating the offences registered vide I-CR Nos.17/2007 and 18/2007. At that time, near the road leading to Lavana village, they intercepted a suspicious person travelling on a motorcycle. Thereafter, the complainant called two panch witnesses, namely, Rameshgiri Kantigiri Goswami and Hasmukhbhai Gordhanbhai Mochi, residents of Lavana, Taluka Diyodar. The complainant introduced himself and the panch witnesses to the accused and asked him about his name. The accused disclosed his name as Ganpatram Amraji Vishnoi.

2.1 The complainant thereafter informed the accused about his right to be searched in the presence of a Gazetted Officer, to which the accused replied in the negative. After following the necessary procedure for search, narcotic substance, namely, "Opium Liquid", was found in his possession and seized. The complainant asked the accused whether he possessed any permit or pass for possessing the said narcotic substance, to which he replied in the negative.

2.2 Thereafter, Unarmed Police Constable Pratapsing Devaji, Buckle No.1619, was sent to call a person for weighing the seized narcotic substance. Accordingly, he brought Goldsmith resident of Lavana, Taluka Diyodar. The seized muddamal was weighed and found to be 500 grams, contained in a pouch, valued at approximately Rs.15,000/-. Thereafter, two samples of 50 grams

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each were drawn from the seized substance and were duly sealed in the presence of the panch witnesses and police staff. It is further the case of the prosecution that accused No.1 was carrying the said "Opium" for delivering the same to accused No.2. Accordingly, the complainant lodged the complaint against the accused persons.

2.3 After completion of the investigation, the charge-sheet was filed against all the accused persons. Thereafter, charge was framed against them at Exh.8 for the offences punishable under Sections 17(b), 22(b), and 29 of the N.D.P.S. Act. The accused persons pleaded not guilty to the charges and claimed to be tried. To prove its case the prosecution examined 15 witnesses and produced 31 documentary evidences, which read as under:-

Oral Evidence

Sr. No.	Exhibit No.	Name of Witness
1	18	Bhaylalbhai Jagjivanbhai- Complainant
2	27	Tejmalbhai Okhabhai- Panch Witness
3	29	Rameshgar Kantigar Goswami- Panch Witness
4	34	Hasmukhbhai Girdharbhai- Panch Witness
5	35	Jamtaji Hinduji Vaghela- Witness
6	36	Udaysing Kuvarbhai Rajput- Witness
7	37	Mansukhbhai Dalpatbhai Soni- Witness
8	41	Maganbhai Harkhabhai- P.S.O. (Police Station Officer)
9	44	Babulal Ramabhai- Writer Head
10	47	Nitinkumar Manuprasad Bhatt- Witness
11	48	Sherkhan Anwarkhan Chavda- Witness
12	49	Velsing Hamirsing- Witness
13	51	Babubhai Nagjibhai- Witness

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14	60	Dhiraj Jayantilal Lariya- Witness
15	61	Amratbhai Hirabhai Chaudhari- Investigating Officer (I.O.)

Documentary Evidence

Sr. No.	Exhibit No.	Description of Document
1	19	Yadi (memorandum) sent for registration of offence
2	20	Original Complaint
3	21	Copy of wireless message
4	22	Yadi sent to Dy.S.P., Palanpur
5	23	Intimation letter sent to D.S.P. under Section 57
6	24	Dispatch note
7	25	F.S.L. Yadi (Forensic Science Laboratory Memo)
8	28	Panchnama of physical condition of the accused
9	30	Panchnama of the accused and motorcycle
10	31	Slip bearing signatures of panchas and complainant
11	32	Slip bearing signatures of panchas and complainant
12	33	Slip bearing signatures of panchas and complainant
13	38	Certificate issued by the goldsmith (Soni)
14	43	Index / List of documents
15	45	Extract of Station Diary
16	50	Yadi issued by P.S.I. to Head Constable to record statement of person providing printout
17	52	Letter written by P.S.I. Diyodar to Superintendent of Police r, L.C.B. (Local Crime Branch)
18	53	Letter written for sending information
19	54	Letter written for sending information
20	55	Letter regarding sending facts/information
21	56	SIM card registration document information
22	57	SIM card information
23	62	Seizure Memo
24	63	Seizure Memo
25	64	Letter from D.S.P.
26	65	F.S.L. Certificate and Yadi for retrieving seized

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		property (Muddamal)
27	66	F.S.L. Report
28	67	Copy of R.C. Book (Vehicle Registration Certificate)
29	68	Letter written by D.S.P.
30	69	Letter written to P.S.I.
31	71	Purshis (closing note/application) for closing evidence

2.4 After evaluating the evidence and after hearing both the sides, the Trial Court acquitted accused respondents vide judgment and order dated 18.03.2008 passed in Special (NDPS) Case No.55 of 2007, for the offences punishable under Sections 17(b) and 22(b) of the N.D.P.S. Act.

2.5 Being aggrieved and dissatisfied with the impugned judgment and order of acquittal the appellat State has preferred present appeal.

3. Heard Ms. Jyoti Bhatt, learned APP for the appellant and Mr.Tushar Chaudhary, learned counsel for the respondents accused.

4. Learned APP for the appellant has submitted that the impugned judgment and order passed by the Trial Court is erroneous, illegal and unjust, and therefore, deserves to be quashed and set aside, as the Trial Court has failed to properly appreciate the evidence led by the prosecution in its true and proper perspective. She has further submitted that the impugned judgment and order passed by the Trial Court suffers from serious errors of law as well as on facts.

4.1 Learned APP for the appellant has submitted that the prosecution examined several witnesses in support of its case and produced various documentary pieces of evidence on record.

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However, without properly appreciating the oral as well as documentary evidence in its true and correct perspective, the Trial Court has erroneously acquitted the accused persons of the offences with which they were charged. Therefore, the impugned judgment and order deserves to be quashed and set aside.

4.2 Learned APP for the appellant has submitted that the judgment and order of acquittal dated 18.03.2008 is contrary to law, the evidence on record, and the settled principles governing criminal trials. She has submitted that the learned Trial Court failed to appreciate that the prosecution proved its case beyond reasonable doubt through reliable oral and documentary evidence.

4.3 The learned APP for the State contended that the Trial Court has failed to properly appreciate the oral evidence of 15 prosecution witnesses and 31 documentary evidences produced on record in support of the prosecution case. The Trial Court has, therefore, committed a grave error apparent on the face of the record in not properly appreciating the material evidence available on record.

4.4 The learned APP further contended that the Trial Court has erred in holding that the prosecution failed to prove beyond reasonable doubt that on 16.02.2007 at about 18:15 hours, accused No.1, Ganpatram Amraji Vishnoi, resident of Sanchore, was found travelling on motorcycle and was in illegal and conscious possession of 500 grams of "Opium (Liquid)", valued at Rs.15,000/-, without any pass or permit. It was further contended that accused No.1 was found near Saraswati High School, Village Lavana, along with cash and a mobile phone valued at Rs.17,180/-, and that he was carrying the said quantity of "Opium (Liquid)" for delivering it to accused No.2, Jagtabhai Nagjibhai Patel (Chaudhary), resident of

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Dhandav, Taluka Diyodar. Thus, both accused persons were found involved in transporting and dealing with the said narcotic substance in furtherance of their common activity and thereby committed the offences punishable under Sections 17(b) and 22(b) of the N.D.P.S. Act. The Trial Court has, therefore, committed a serious error in not properly appreciating the evidence on record.

4.5 The learned APP submitted that the Trial Court failed to properly appreciate the evidence of the complainant and, by discarding and disbelieving his testimony, erroneously concluded that the prosecution had failed to prove its case beyond reasonable doubt. Such appreciation of evidence is contrary to the material on record and has resulted in a miscarriage of justice.

4.6 The learned APP further submitted that P.W.8, P.S.O. Maganbhai Harkhabhai, was examined at Exh.41; P.W.9, Writer Head Constable Babulal Ramabhai, was examined at Exh.44; P.W.10, Nitin Prasad Manukumar Bhatt, was examined at Exh.47; P.W.11, Sherkhan Anwarkhan Chavda, was examined at Exh.48; and P.W.13, Babubhai Nagjibhai, was examined at Exh.51 on behalf of the prosecution. According to the learned APP, all these police witnesses have supported the case of the prosecution. However, the Trial Court, without properly appreciating their evidence in light of the other oral and documentary evidence available on record, committed a grave error in discarding and disbelieving their testimony and in holding that the prosecution had failed to prove the charges against the accused persons beyond reasonable doubt.

4.7 The learned APP submitted that the Trial Court ought to have properly appreciated the evidence of P.W.15, Investigating Officer Amratbhai Hirabhai Chaudhary, who was examined at Exh.61. He

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fully supported the case of the prosecution. In his deposition, he stated that after registration of the FIR by the complainant, the investigation of the case was entrusted to him. He recorded the statements of the witnesses, including the statement of Mansukhbhai Dalpatbhai Soni, who had weighed the recovered muddamal. He also carried out the necessary investigation, arrested the other accused, prepared the body-search panchnama and, after completion of the investigation and receipt of the FSL certificate, submitted the charge-sheet. The learned APP submitted that the Trial Court, by discarding and disbelieving the evidence of the Investigating Officer, committed a grave error in appreciation of evidence.

4.8 The learned APP submitted that P.W.7, Mansukhbhai Dalpatbhai Soni, was examined at Exh.37 on behalf of the prosecution. Though the said witness turned hostile, he produced the weight certificate relating to the recovered muddamal "Opium" at Exh.38. The Trial Court ought to have considered the documentary evidence produced by the said witness along with the other evidence available on record. Merely because the witness did not fully support the prosecution case, his evidence and the document produced by him could not have been discarded without proper appreciation.

4.9 The learned APP further contended that the Trial Court erred in holding that the prosecution had failed to prove beyond reasonable doubt that the muddamal article was seized from accused No.1. According to the learned APP, the evidence on record clearly establishes that the muddamal pouch containing the narcotic substance was recovered from the possession of accused No.1 and that he was in conscious possession thereof. There was sufficient material on record to establish the involvement of the accused

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persons in the commission of the alleged offences. The Trial Court, therefore, ought not to have arrived at a contrary conclusion that the prosecution had failed to prove the charges beyond reasonable doubt. She has further submitted that the Trial Court ought to have properly appreciated the evidence of the aforesaid witnesses, which clearly disclosed that the necessary procedure prescribed under the N.D.P.S. Act had been followed by the complainant and the investigating agency. The evidence on record establishes compliance with the statutory requirements and supports the prosecution case.

4.10 The learned APP submitted that the Trial Court has failed to appreciate the said material evidence in its proper perspective and has consequently arrived at an erroneous conclusion and therefore,the impugned judgment and order being contrary to the evidence on record and the settled principles of law deserves to be quashed and set aside.

4.11 In support of his submissions learned APP has referred to as and relied upon the following decisions:-

1. State of Punjab vs. Baldev Sigh reported in 1999 (6) SCC 172;

2. Narendrabhai Dhirajlal Kacha vs. State of Gujarat reported in 2023 (0) AIJEL HC 247162;

3. SK. Raju Alias Abdul Haque Alias Jagga vs. State of West Bengal reported in (2018) 9 SCC 708

5. On the other hand, Mr. Chaudhary, learned advocate for the respondents-accused has supported the judgment and order of acquittal passed by the Trial Court. The learned advocate appearing for the respondents-accused submitted that the impugned judgment and order of acquittal passed by the Trial Court is just, legal and proper and does not call for any

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interference by this Court. It was submitted that the Trial Court has rightly appreciated the oral as well as documentary evidence available on record and has recorded its findings on the basis of proper appreciation of the facts and settled principles of law.

5.1 Learned counsel for the respondents has contended that there are serious lapses on the part of the investigating agency and that mandatory statutory provisions were violated during the course of the investigation. Learned advocate for the respondents-accused has further submitted that the prosecution has failed to establish its case against the respondents-accused beyond reasonable doubt.

5.2 Learned advocate for the respondents-accused has submitted that the prosecution has failed to prove its case beyond reasonable doubt, as the mere examination of witnesses and production of documentary evidence do not, by themselves, establish the guilt of the accused unless such evidence is reliable, cogent and inspires confidence.

5.3 Learned advocate for the respondents-accused has further submitted that the prosecution has failed to point out any perversity, illegality or misreading of the evidence in the impugned judgment and order passed by the Trial Court. Therefore, the present appeal is devoid of merit and deserves to be dismissed.

5.4 Learned advocate for the respondents accused has referred to and relied upon the following decisions:-

> *1. Karnail Singh vs. State of Haryana dated 29.7.2009 in Criminal Appeal No.36 of 2003*
>
> *2.State of Gujarat vs. Ganeshbhai Becharbhai Prajapati dated 15.04.2026 in Criminal Appeal No.632 of 2010.*

6. I have perused the relevant documents and material placed on

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record. I have also gone through the judgment and order passed by the Trial Court as well as the record and proceedings.

7. Upon perusal of the impugned judgment and order, as well as the submissions advanced by the learned advocates for both sides and upon appreciation of the deposition of the witnesses, issues that arises for consideration before this Court are as under:-

> *Whether the Trial Court committed any error in passing the impugned judgment and order of acquittal?*
>
> *Whether the Trial Court, while appreciating the evidence of the prosecution witnesses, has committed any error of law or fact?*
>
> *Whether the impugned judgment and order of acquittal suffers from any illegality or perversity?*

8. In light of the above stated submission and the contentions raised by both the sides and after going through the impugned judgment and order of acquittal and the evidence recorded by the Trial Court the issued framed by the Court for determination is required to be examined in light of the facts of the present case. It is the case of the prosecution that the complainant, who was serving as a Police Inspector with the Local Crime Branch (LCB), Palanpur, was on duty. On 16.02.2007, the complainant, along with other police personnel, proceeded from Palanpur to Tharad in connection with the investigation of an offence registered at Tharad Police Station vide C.R. No. 14 of 2007 for the offences punishable under Sections 457 and 380 of the IPC. After visiting Tharad, they proceeded towards Deodar in connection with the offences registered at Deodar Police Station vide I-C.R. Nos. 17 of 2007 and 18 of 2007 for the offences punishable under Sections 457 and 380 of the IPC.

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9. While the Police Inspector along with other police personnel were travelling via Jetara and had reached at village Lawana, the complainant noticed a motorcycle bearing a Rajasthan registration number and became suspicious. He, therefore, attempted to intercept the motorcyclist. However, instead of stopping, the motorcyclist tried to flee and accelerated the speed of the motorcycle. The complainant and other police personnel chased and intercepted him, whereupon he stopped the motorcycle near the Government School. Thereafter, the Investigating Officer called for panchas from the local area of Deodar. It is pertinent to note that, until the panchas arrived, the Investigating Officer did not make any inquiry or investigation as to why respondent No.1 had attempted to flee instead of stopping his vehicle.

10. Since respondent No.1 was a permanent resident of Rajasthan and was not conversant with the Gujarati language, the complainant-Investigating Officer, in the presence of the panchas and other police personnel, allegedly asked him whether he desired to be searched in the presence of a Gazetted Officer. In response thereto, respondent No.1 allegedly gave his consent that he did not wish to be searched in the presence of a Gazetted Officer. Thereafter, his personal search was carried out in the presence of the panchas, during which one packet was found in his possession. The substance contained in the packet was suspected to be a narcotic substance. Consequently, a goldsmith was called with a weighing machine, and upon weighing, the substance was found to be opium weighing 500 grams, allegedly recovered from the possession of respondent No.1. It was further alleged that the said substance was to be delivered to respondent No.2 at Deodar. On the basis thereof, the Investigating Officer registered a complaint at Deodar Police Station for the offences punishable under Sections

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17(b) and 22(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985. Thereafter, the trial proceeded, during which the prosecution examined 15 witnesses, including the panch witnesses and a goldsmith, while the remaining witnesses were police personnel. The prosecution also produced various documentary pieces of evidence on record.

11. Now, considering the aforesaid facts, it appears that the police personnel had originally proceeded for the purpose of investigating two different offences registered at two different police stations, namely, Tharad and Deodar. They were travelling in a police jeep in connection with the said investigation. However, no entry was made in the station diary or in the log book regarding their departure for the purpose of investigation. It is provided under the relevant provisions of the Code of Criminal Procedure as well as the Police Manual that, whenever an Investigating Officer proceeds to a particular place during the course of an investigation, the necessary entry is required to be made in the station diary and, where applicable, in the log book before proceeding for such investigation. In the present case, the evidence on record reveals that no such entry was made either in the station diary or in the log book. Furthermore, the prosecution has also failed to produce the relevant details or material pertaining to the cases in connection with which the police personnel had allegedly proceeded for investigation.

12. So far as the incident involving the present respondents is concerned, respondent No.1 was intercepted midway near village Lawana. At the time when respondent No.1 was intercepted, respondent No.2 was not present at the spot. It is the case of the prosecution that, on the basis of the statement allegedly made by respondent No.1, respondent No.2 came to be implicated in the

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crime in question. Even if the prosecution case is accepted, namely, that respondent No.1 was found in possession of 500 grams of opium and that the said opium was allegedly to be delivered to respondent No.2, serious discrepancies and infirmities have emerged during the course of the investigation, which have also been noticed by the Trial Court. As observed by the Trial Court, the mandatory requirements of Sections 42, 50 and 57 of the NDPS Act were not duly complied with.

13. In this regard, it is necessary to examine the evidence of the prosecution witnesses. PW-1, who was the complainant as well as the Investigating Officer, deposed that respondent No.1 was asked whether he desired to be searched in the presence of a Gazetted Officer. However, there is no satisfactory evidence on record to establish that respondent No.1 had, in fact, understood the said question and voluntarily declined such a search. In his statement recorded under Section 313 of the Code of Criminal Procedure, respondent No.1 specifically denied that the said fact had been communicated to him. It was also his specific case that no such question was asked to him by the Investigating Officer. It is further relevant to note that the complainant himself was a Police Inspector and, according to the defence, was a Gazetted Officer; nevertheless, respondent No.1 was allegedly asked whether he desired to be searched in the presence of a Gazetted Officer.

14. The Trial Court, after appreciating the evidence of PW-1, PW-5 and PW-6, has considered whether the requirements of Section 50 of the NDPS Act were duly complied with and, more particularly, whether respondent No.1 was informed of his right in a language known to and understood by him. It has also emerged from the record that the facts and contents of the FIR were not explained or communicated to respondent No.1 in a language known to and

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understood by him. The Trial Court has considered the aforesaid aspects in detail from paragraph No.9 onwards. It has been specifically noticed that PW-1, who was the complainant and who initially registered the offence, did not disclose the name of respondent No.2 at the time of registration of the FIR. The name and role of respondent No.2 were not known at that stage. It has further been observed that the complainant, being a Police Inspector who himself registered the FIR against respondent No.1, could not have recorded the statement of the accused for the purpose of implicating respondent No.2 and he has not right to record the statement. It is also evident from the FIR that the role of respondent No.2 was nowhere mentioned therein and that respondent No.2 came to be arraigned as an accused only purportedly on the basis of the statement of respondent No.1.

15. The Trial Court, after considering the aforesaid submissions and upon a detailed appreciation of the evidence of the prosecution witnesses, has discussed the entire aspect up to paragraph No.26 of the impugned judgment. After assigning cogent reasons, the Trial Court has rightly disbelieved the case of the prosecution. It has also been observed by the Trial Court that the complainant was a Police Inspector serving in the Local Crime Branch, whose office was situated on the first floor of the premises, while the office of the District Superintendent of Police, Banaskantha, was situated on the ground floor of the same premises. As contemplated under Section 57 of the NDPS Act, the concerned officer is required to make a report of the arrest and seizure to his immediate superior officer within the prescribed period.

16. In the present case, however, the prosecution has failed to establish that the complainant or the Investigating Officer had immediately informed the District Superintendent of Police

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regarding the seizure of the alleged contraband or the arrest of respondent No.1 in connection with the recovery of the alleged opium from his possession. Thus, the prosecution has failed to establish due compliance with the mandatory statutory requirements, particularly those contemplated under Sections 42, 50 and 57 of the NDPS Act. In view of the aforesaid serious lapses and non-compliance with the mandatory provisions of law, the Trial Court was justified in extending the benefit of doubt to the respondent-accused and in recording an order of acquittal.

17. At this stage, it is appropriate to refer Sections 17, 22, 42, 50, 52 and Section 57 of the NDPS Act which read as under:-

> *"**17. Punishment for contravention in relation to prepared opium.—**Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses prepared opium shall be punishable,—*
>
> *(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to 1 [one year], or with fine which may extend to ten thousand rupees, or with both; or*
>
> *(b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees; or*
>
> *(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years, and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:*
>
> *Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.*
>
> ***22. Punishment for contravention in relation to psychotropic substances.—**Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any psychotropic*

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substance shall be punishable,—

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to 5 [one year], or with fine which may extend to ten thousand rupees, or with both;

(b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees;

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years, and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees

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

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

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

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or

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conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and

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

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

Provided further that] if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.
(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.

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

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

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

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

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

[(5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to

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the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under section100 of the Code of Criminal Procedure, 1973 (2 of 1974).

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

[50A. Power to undertake controlled delivery.—*The Director General of Narcotics Control Bureau constituted under sub-section (3) of section 4 or any other officer authorised by him in this behalf, may, notwithstanding anything contained in this Act, undertake controlled delivery of any consignment to—*
(a) any destination in India;

(b) a foreign country, in consultation with the competent authority of such foreign country to which such consignment is destined, in such manner as may be prescribed.

52. Disposal of persons arrested and articles seized.—*(1) Any officer arresting a person under section 41, section 42, section 43 or section 44 shall, as soon as may be, inform him of the grounds for such arrest.*

(2) Every person arrested and article seized under warrant issued under sub-section (1) of section 41 shall be forwarded without unnecessary delay to the Magistrate by whom the warrant was issued.

(3) Every person arrested and article seized under sub-section (2) of section 41, section 42, section 43 or section 44 shall be forwarded without unnecessary delay to—

(a) the officer-in-charge of the nearest police station, or

(b) the officer empowered under section 53.

(4) The authority or officer to whom any person or article is forwarded under sub-section (2) or sub-section (3) shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or article.

[52A. Disposal of seized narcotic drugs and psychotropic substances.— *[(1) The Central Government may, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration, in*

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respect of any narcotic drugs, psychotropic substances, controlled substances or conveyances, by notification in the Official Gazette, specify such narcotic drugs, psychotropic substances, controlled substances or conveyance or class of narcotic drugs, class of psychotropic substances, class of controlled substances or conveyances, which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may, from time to time, determine after following the procedure hereinafter specified.]

(2) Where any [narcotic drugs, psychotropic substances, controlled substances or conveyances] has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the officer referred to in sub-section (1) shall prepare an inventory of such 4 [narcotic drugs, psychotropic substances, controlled substances or conveyances] containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the 4 [narcotic drugs, psychotropic substances, controlled substances or conveyances] or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the 4 [narcotic drugs, psychotropic substances, controlled substances or conveyances] in any proceedings under this Act and make an application, to any Magistrate for the purpose of—

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

(b) taking, in the presence of such magistrate, photographs of 5 [such drugs, substances or conveyances] and certifying such photographs as true; or

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

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

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

***57. Report of arrest and seizure.**—Whenever any person makes any arrest or seizure under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the*

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particulars of such arrest or seizure to his immediate official superior.

[57A. Report of seizure of property of the person arrested by the notified officer.—Whenever any officer notified under section 53 makes an arrest or seizure under this Act, and the provisions of Chapter VA apply to any person involved in the case of such arrest or seizure, the officer shall make a report of the illegally acquired properties of such person to the jurisdictional competent authority within ninety days of the arrest or seizure].”

18. Now, considering the above referred provision of the NDPS Act, the prosecution miserably failed to establish the compliance of the above referred provision of the Act.

19. Even the Trial Court has referred the decision of the Honourable Apex Court in the case of ***State of Punjab vs. Balbir Singh reported in AIR 1994 SC 1872,*** whereby Hon’ble Apex Court has held as under:-

“Head Note (D) Narcotic Drugs and Psychotropic Substance Act (61 of 1985), Ss. 50, 41, 42 - Search and Seizure - On prior information empowered officer acting under S.41(2) of S.42-Should comply with provisions of S.50-Provisions of S.50 are mandatory.

17. One another important question that arises for consideration is whether failure to comply with the conditions laid down in Section 50 of the NDPS Act by the empowered or authorised officer while conducting the search, affects the prosecution case. The said provision (Section 50) lays down that any officer duly authorised under Section 42, who is about to search any person under the provisions of Sections 41, 42 and 43, shall, if such person so requires, take him without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in Section 42 or to the nearest Magistrate and if such requisition is made by the person to be searched, the authorised officer concerned can detain him until he can produce him before such Gazetted Officer or the Magistrate. After such production, the Gazetted Officer or the Magistrate, if sees no reasonable ground for search, may discharge the person. But otherwise he shall direct that the search be made. To avoid humiliation to females, it is also provided that no female shall be searched by anyone except a female. The words "if the person to be searched so desires" are important. One of the submissions is whether the person who is about to be searched should by himself make a request or whether it is obligatory on the part of the empowered or the authorised officer to inform such

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person that if he so requires, he would be produced before a Gazetted Officer or a Magistrate and thereafter the search would be conducted. In the context in which this right has been conferred, it must naturally be presumed that it is imperative on the part of the officer to inform the person to be searched of his right that if he so requires to be searched before a Gazetted Officer or a Magistrate. To us, it appears that this is a valuable right given to the person to be searched in the presence of a Gazetted Officer or a Magistrate if he so requires, since such a search would impart much more authenticity and creditworthiness to the proceedings while equally providing an important safeguard to the accused. To afford such an opportunity to the person to be searched, he must be aware of his right and that can be done only by the authorised officer informing him. The language is clear and the provision implicitly makes it obligatory on the authorised officer to inform the person to be searched of his right.

21. In Miranda v. Arizona17 the Court, considering the question whether the accused be apprised of his right not to answer and keep silent while being interrogated by the police, observed thus :

"*At the outset, if a person in custody is to be subjected to interrogation, he must first be informed in clear and unequivocal terms that he has the right to remain silent. For those unaware of the privilege, the warning is needed simply to make them aware of it the threshold requirement for an intelligent decision as to its exercise. More important, such a warning is an absolute prerequisite in overcoming the inherent pressures of the interrogation atmosphere.*"
It was further observed thus :

"*The warning of the right to remain silent must be accompanied by the explanation that anything said can and will be used against the individual in court. This warning is needed in order to make him aware not only of the privilege, but also of the consequences of foregoing it. It is only through an awareness of these consequences that there can be any assurance of real understanding and intelligent exercise of the privilege. Moreover, this warning may serve to make the individual more acutely aware that he is faced with a phase of the adversary system that he is not in the presence of persons acting solely in his interest.*"
When such is the importance of a right given to an accused person in custody in general, the right by way of safeguard conferred under Section 50 in the context is all the more important and valuable. Therefore it is to be, taken as an imperative requirement on the part of the officer intending to search to inform the person to be searched of his right that if he so chooses, he will be searched in the presence of a Gazetted Officer or a Magistrate. Thus the provisions of Section 50 are mandatory.

25. The question considered above arise frequently before the trial

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courts. Therefore we find it necessary to set out our conclusions which are as follows :

(1) If a police officer without any prior information as contemplated under the provisions of the NDPS Act makes a search or arrests a person in the normal course of investigation into an offence or suspected offences as provided under the provisions of CrPC and when such search is completed at that stage Section 50 of the NDPS Act would not be attracted and the question of complying with the requirements thereunder would not arise. If during such search or arrest there is a chance recovery of any narcotic drug or psychotropic substance then the police officer, who is not empowered, should inform the empowered officer who should thereafter proceed in accordance with the provisions of the NDPS Act. If he happens to be an empowered officer also, then from that stage onwards, he should carry out the investigation in accordance with the other provisions of the NDPS Act.

(2-A) Under Section 41(1) only an empowered Magistrate can issue warrant for the arrest or for the search in respect of offences punishable under Chapter IV of the Act etc. when he has reason to believe that such offences have been committed or such substances are kept or concealed in any building, conveyance or place. When such warrant for arrest or for search is issued by a Magistrate who is not empowered, then such search or arrest if carried out would be illegal.

Likewise only empowered officers or duly authorized officers as enumerated in Sections 41(2) and 42(1) can act under the provisions of the NDPS Act. If such arrest or search is made under the provisions of the NDPS Act by anyone other than such officers, the same would be illegal.

(2-B) Under Section 41(2) only the empowered officer can give the authorisation to his subordinate officer to carry out the arrest of a person or search as mentioned therein. If there is a contravention, that would affect the prosecution case and vitiate the conviction.

(2-C) Under Section 42(1) the empowered officer if has a prior information given by any person, that should necessarily be taken down in writing. But if he has reason to believe from personal knowledge that offences under Chapter IV have been committed or materials which may furnish evidence of commission of such offences are concealed in any building etc. he may carry out the arrest or search without a warrant between sunrise and sunset and this provision does not mandate that he should record his reasons of belief. But under the proviso to Section 42(1) if such officer has to carry out such search between sunset and sunrise, he must record the grounds of his belief.

To this extent these provisions are mandatory and contravention of

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the same would affect the prosecution case and vitiate the trial.

(3) Under Section 42(2) such empowered officer who takes down any information in writing or records the grounds under proviso to Section 42(1) should forthwith send a copy thereof to his immediate official superior. If there is total non-compliance of this provision the same affects the prosecution case. To that extent it is mandatory. But if there is delay whether it was undue or whether the same has been explained or not, will be a question of fact in each case.

(4-A) If a police officer, even if he happens to be an "empowered" officer while effecting an arrest or search during normal investigation into offences purely under the provisions of Cr. PC fails to strictly comply with the provisions 'of Sections 100 and 165 Cr. PC including the requirement to record reasons, such failure would only amount to an irregularity.

(4-B) If an empowered officer or an authorised officer under Section 41(2) of the Act carries out a search, he would be doing so under the provisions of Cr. PC namely Sections 100 and 165 Cr. PC and if there is no strict compliance with the provisions of Cr. PC then such search would not per se be illegal and would not vitiate the trial.

The effect of such failure has to be borne in mind by the courts while appreciating the evidence in the facts and circumstances of each case.

(5) On prior information the empowered officer or authorised officer while acting under Sections 41(2) or 42 should comply with the provisions of Section 50 before the search of the person is made and such person should be informed that if he so requires, he shall be produced before a Gazetted Officer or a Magistrate as provided thereunder. It is obligatory on the part of such officer to inform the person to be searched. Failure to inform the person to be searched and if such person so requires, failure to take him to the Gazetted Officer or the Magistrate, would amount to non-compliance of Section 50 which is mandatory and thus it would affect the prosecution case and vitiate the trial. After being so informed whether such person opted for such a course or not would be a question of fact.

(6) The provisions of Sections 52 and 57 which deal with the steps to be taken by the officers after making arrest or seizure under Sections 41 to 44 are by themselves not mandatory. If there is non-compliance or if there are lapses like delay etc. then the same has to be examined to see whether any prejudice has been caused to the accused and such failure will have a bearing on the appreciation of evidence regarding arrest or seizure as well as on merits of the case

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20. At this stage, it is appropriate to refer the the decision in case of ***H.I. Majmudar Intelligence Officer vs. Santosh Pandurang Setty reported in 2026 (0) AIJEL HC 253136,*** whereby the Hon'ble Apex Court has held as under:-

> *'Heard Note (c) Narcotic Drugs and Psychotropic Substances Act, 1985, Ss. 42, 50 and 57- Search and seizure Mandatory provisions - Non-compliance - At the time of search and seizure, there was clear violation of S. 42 of the NDPS Act - Held, provision of search and seizure under S. 42 is mandatory and non-compliance thereof is impermissible under law - Reliance placed on Boota Singh v. State of Haryana, (2021) 19 SCC 606; Karnail Singh v. State of Haryana, (2009) 8 SCC 539; Sukhdev Singh v. State of Haryana, (2013) 2 SCC 212; State of Rajasthan v. Jagraj Singh @ Hansa, (2016) 11 SCC 687.*
>
> *8. Further, re-appreciating the evidence, it appears that, as per the case of the prosecution, the statements of the witnesses were recorded and as per the case of the prosecution, the accused Nos. 1 to 3 were engaged in transportation of contraband, and the said fact is revealed on basis of statements of the co-accused i.e., accused Nos. 2 and 3, but nowhere has any evidence supported the said contention, and in absence of any legal evidence qua involvement of the accused, more particularly how and from where the contraband was loaded and shifted to the godown, no evidence on record, and even no independent witness has supported the case of the prosecution qua the alleged conspiracy or meeting of minds on the part of the accused persons. Even as per the complaint, the prosecution has relied upon the statements of the accused persons as incriminating evidence, and such inculpatory statements are also not true which support any evidence and no corroborative piece of evidence is on record to show that the accused has hatched conspiracy and engaged in transportation of huge contraband. The only evidence led before the learned Sessions Court is that the accused No.2 was present at the time of raid, and it is stated that contraband was seized from his possession but no evidence qua accused Nos. 1 and 3 has been collected. Not only that, the ownership of the godown is also not proved and the owner of the godown is not cited as a witness. The independent witness, Deepak Parikh, turned hostile and has not supported the case of the prosecution. Even based on whatever allegations are levelled against the accused and evidence led, it clearly reveals that the prosecution has not followed the mandatory provisions for search and seizure under the NDPS Act. At the time of search, there was a clear violation of Section 42 of the NDPS Act and the learned Sessions Judge has also assigned reason for that qua violation of Sections 42, 50 and 57 of the NDPS Act. The*

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provision of search and seizure under Section 42 is mandatory and in this regard, reference is required to be made to the judgments of the Hon'ble Apex Court in the case of Boota Singh Vs. The State of Haryana reported in (2021) 19 SCC 606; Karnail Singh Vs. State of Haryana reported in (2009) 8 SCC 539; Sukhdev Singh Vs. State of Haryana, reported in (2013) 2 SCC 212, and State of Rajasthan Vs. Jagraj Singh @ Hansa, reported in (2016) 11 SCC 687. Non-compliance of the mandatory provision of Section 42 is absolutely clear from the record and such non-compliance is impermissible under the law. Hence, the learned Sessions Judge has not committed any error in recording findings qua non-compliance of mandatory provisions under the NDPS Act."

21. In the decision in case of ***Karnail Singh (supra)*** the Hon'ble Apex Court has held as under:-

"(6) In the light of the above decisions and the principles enunciated therein, it would be appropriate to refer to Section 42 of the NDPS Act which is relevant for the present purpose as it stood before its amendment by Act 9 of 2001. It reads as under:-

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

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

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

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under Chapter IV relating to such drug or substance; and

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(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under Chapter IV relating to such drug or substance:

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

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

Sub-section (2) as replaced by Act 9 of 2001 is extracted below:

"*(2) Where an officer takes down any information in writing under sub-Section (1) or records grounds for his belief under the proviso thereto, he shall within seventy two hours send a copy thereof to his immediate official superior.*"
15) Under Section 42(2) as it stood prior to amendment such empowered officer who takes down any information in writing or records the grounds under proviso to Section 42(1) should forthwith send a copy thereof to his immediate official superior. If there is total non-compliance of this provision the same would adversely affect the prosecution case and to that extent it is mandatory. But if there is delay whether it was undue or whether the same has been explained or not, will be a question of fact in each case, it is to be concluded that the mandatory enforcement of the provisions of Section 42 of the Act non-compliance of which may vitiate a trial has been restricted only to the provision of sending a copy of the information written down by the empowered officer to immediate official superior and not to any other condition of the Section. Abdul Rashid (supra) has been decided on 01.02.2000 but thereafter Section 42 has been amended with effect from 02.10.2001 and the time of sending such report of the required information has been specified to be within 72 hours of writing down the same. The relaxation by the legislature is evidently only to uphold the object of the Act. The question of mandatory application of the provision can be answered in the light of the said amendment. The non-compliance of the said provision may not vitiate the trial if it does not cause any prejudice to the accused.

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

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(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 concerned Register 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 of requirements of sub-sections (1) and (2) of section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance of 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 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".

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22. In the decision in case of ***Vijaysinh Chandubha Jadeja vs. State of Gujarat reported in 2011(1) SCC 609,*** the Hon'ble Apex Court has held as under:-

> *"18.Although the Constitution Bench did not decide in absolute terms the question whether or not Section 50 of the NDPS Act was directory or mandatory yet it was held that provisions of sub-section (1) of Section 50 make it imperative for the empowered officer to "inform" the person concerned (suspect) about the existence of his right that if he so requires, he shall be searched before a gazetted officer or a Magistrate; failure to "inform" the suspect about the existence of his said right would cause prejudice to him, and in case he so opts, failure to conduct his search before a gazetted officer or a Magistrate, may not vitiate the trial but would render the recovery of the illicit article suspect and vitiate the conviction and sentence of an accused, where the conviction has been recorded only on the basis of the possession of the illicit article, recovered from the person during a search conducted in violation of the provisions of Section 50 of the NDPS Act. The Court also noted that it was not necessary that the information required to be given under Section 50 should be in a prescribed form or in writing but it was mandatory that the suspect was made aware of the existence of his right to be searched before a gazetted officer or a Magistrate, if so required by him. We respectfully concur with these conclusions. Any other interpretation of the provision would make the valuable right conferred on the suspect illusory and a farce.*
>
> *19.As noted above, sub-sections (5) and (6) were inserted in Section 50 by Act 9 of 2001. It is pertinent to note that although by the insertion of the said two sub-sections, the rigour of strict procedural requirement is sought to be diluted under the circumstances mentioned in the sub- sections, viz. when the authorised officer has reason to believe that any delay in search of the person is fraught with the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance etc., or article or document, he may proceed to search the person instead of taking him to the nearest gazetted officer or Magistrate. However, even in such cases a safeguard against any arbitrary use of power has been provided under sub-section (6). Under the said sub-section, the empowered officer is obliged to send a copy of the reasons, so recorded, to his immediate official superior within seventy two hours of the search. In our opinion, the insertion of these two sub-sections does not obliterates the mandate of sub-section (1) of Section 50 to inform the person, to be searched, of his right to be taken before a gazetted officer or a Magistrate. The object and the effect of insertion of sub-sections (5) and (6) were considered by a Constitution Bench of this Court, of which one of us (D.K. Jain, J.) was a member, in Karnail Singh Vs. State of Haryana13. Although*

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in the said decision the Court did observe that by virtue of insertion of sub-sections (5) and (6), the mandate given in Baldev Singh's case (supra) is diluted but the Court also opined that it cannot be said that by the said insertion, the protection or safeguards given to the suspect have been taken away completely. The Court observed :-

"*Through this amendment the strict procedural requirement as mandated by Baldev Singh case was avoided as relaxation and fixing of the reasonable time to send the record to the superior official as well as exercise of Section 100 CrPC was included by the legislature. The effect conferred upon the previously mandated strict compliance with Section 50 by Baldev Singh case was that the procedural requirements which may have handicapped an emergency requirement of search and seizure and give the suspect a chance to escape were made directory based on the reasonableness of such emergency situation. Though it cannot be said that the protection or safeguard given to the suspects have been taken away completely but certain flexibility in the procedural norms were adopted only (2009) 8 SCC 539 to balance an urgent situation. As a consequence the mandate given in Baldev Singh case is diluted.*"

22.In view of the foregoing discussion, we are of the firm opinion that the object with which right under Section 50(1) of the NDPS Act, by way of a safeguard, has been conferred on the suspect, viz. to check the misuse of power, to avoid harm to innocent persons and to minimise the allegations of planting or foisting of false cases by the law enforcement agencies, it would be imperative on the part of the empowered officer to apprise the person intended to be searched of his right to be searched before a gazetted officer or a Magistrate. We have no hesitation in holding that in so far as the obligation of the authorised officer under sub-section (1) of Section 50 of the NDPS Act is concerned, it is mandatory and requires a strict compliance. Failure to comply with the provision would render the recovery of the illicit article suspect and vitiate the conviction if the same is recorded only on the basis of the recovery of the illicit article from the person of the accused during such search. Thereafter, the suspect may or may not choose to exercise the right provided to him under the said provision. As observed in Re Presidential Poll14, it is the duty of the courts to get at the real intention of the Legislature by carefully attending to the whole scope of the provision to be construed. "The key to the opening of every law is the reason and spirit of the law, it is the animus imponentis, the intention of the law maker expressed in the law itself, taken as a whole." We are of the opinion that the concept of "substantial compliance" with the requirement of Section 50 of the NDPS Act introduced and read into the mandate of the said Section in Joseph Fernandez (supra) and Prabha Shankar Dubey (supra) is neither borne out from the language of sub-section (1) of Section 50 nor it is in consonance with the dictum laid down in Baldev

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Singh's case (supra). Needless to add that the question whether or not the procedure prescribed has been followed and the requirement of Section 50 had been met, is a matter of trial. It would neither be possible nor feasible to lay down any absolute formula in that behalf. We also feel that though Section 50 gives an option to the empowered officer to take such person (suspect) either before the nearest gazetted officer or the Magistrate but in order to impart authenticity, transparency and creditworthiness to the entire proceedings, in the first instance, an endeavour should be to produce the suspect before the nearest Magistrate, who enjoys more confidence of (1974) 2 SCC 33 the common man compared to any other officer. It would not only add legitimacy to the search proceedings, it may verily strengthen the prosecution as well."

23. In the decision in case of State of ***Himachal Pradesh vs. Surat Singh reported in 2026 (0) AIJEL SC 76708*** the Hon'ble Apex Court has held as under:-

"18. Their lordships of the Hon'ble Supreme Court in the case of Suresh and others versus State of Madhya Pradesh, reported in (2013) 1 SCC 550, have held that in a case where the accused were merely asked whether they would offer their personal search to police officer concerned or to gazetted officer and the appellants gave their consent for their personal search by police officer concerned, it will amount to non-compliance of Section 50(1) of the ND & PS Act. Their lordships have held as follows:

"*16) The above Panchnama indicates that the appellants were merely asked to give their consent for search by the police party and not apprised of their legal right provided under Section 50 of the NDPS Act to refuse/to allow the police party to take their search and opt for being searched before the Gazetted officer or by the Magistrate. In other words, a reading of the Panchnama makes it clear that the appellants were not apprised about their right to be searched before a gazetted officer or a Magistrate but consent was sought for their personal search. Merely asking them as to whether they would offer their personal search to him, i.e. the police officer or to gazetted officer may not satisfy the protection afforded under Section 50 of the NDPS Act as interpreted in Baldev singh's case.*

17. Further a reading of the judgments of the trial Court and the High Court also show that in the presence of Panchas, the SHO merely asked all the three appellants for their search by him and they simply agreed. This is reflected in the Panchnama. Though in Baldev Singh's case, this Court has not expressed any opinion as to whether the provisions of Section 50 are mandatory or directory but "failure to inform" the person concerned of his right as

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emanating from sub-section (1) of Section 50 may render the recovery of the contraband suspect and the conviction and sentence of an accused bad and unsustainable in law. In Vijaysinh Chan Jadeja's case (supra), recently the Constitution Bench has explained the mandate provided under sub-section (1) of Section 50 and concluded that it is mandatory and requires strict compliance. The Bench also held that failure to comply with the provision would render the recovery of the illicit article suspect and vitiate the conviction if the same is recorded only on the basis of the recovery of the illicit article from the person of the accused during such search. The concept of substantial compliance as noted in Joseph Fernadez (supra) and Prabha Shankar Dubey (supra) were not acceptable by the Constitution Bench in Vijaysinh Chandubha Jadeja, accordingly, in view of the language as evident from the panchnama which we have quoted earlier, we hold that, in the case on hand, the search and seizure of the suspect from the person of the appellants is bad and conviction is unsustainable in law."

18. Their lordships of the Hon'ble Supreme Court in case of State of Rajasthan versus Parmanand and another, reported in (2014) 5 SCC 345, have held that if merely a bag is carried by person is searched without there being any search of his person, S. 50 will have no application but if bag carried by him is searched and his person is also searched, S. 50 would be attracted. Their lordships have also held that it was improper for PW-10 S.I. "Q" to tell respondents that a third alternative was available. It has been held as follows:

15. "Thus, if merely a bag carried by a person is searched without there being any search of his person, Section 50 of the NDPS Act will have no application. But if the bag carried by him is searched and his person is also searched, Section 50 of the NDPS Act will have application. In this case, respondent No.1 Parmanand's bag was searched. From the bag, opium was recovered. His personal search was also carried out. Personal search of respondent No.2 Surajmal was also conducted. Therefore, in light of judgments of this Court mentioned in the preceding paragraphs, Section 50 of the NDPS Act will have application."

24. It is also worthwhile to refer the decision of the Hon'ble Apex Court in case of ***State of Rajasthan vs. Jag Raj Singh reported in 2016 (11) SCC 687 and in the case of Boota Singh vs. State of Haryana reported in 2021 (19) SCC 606*** whereby in similar set of facts the Hon'ble Apex Court has deal with Sections 42, 43 and 50 of the NDPS Act.

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25. Furthermore, though the police personnel had gone to investigate offenses in Diyodar and Tharad, despite having traveled by vehicle, no logbook of that vehicle has been produced, nor have any documents concerning the investigation of those offenses been submitted on record. Normally, when a person involved in a crime is fleeing with contraband opium as alleged by the complainant, and the police are pursuing them, the accused would naturally attempt to discard such contraband. However, no such attempt was made here. Moreover, the prosecution's evidence claiming that after capturing the accused, no conversation or interrogation took place with them until the panch witnesses arrived is far from reality, creates suspicion, and is unacceptable. Therefore, the the decision of Hon'ble Court in the case of ***State of Punjab vs. Balbir Singh (supra)*** is applicable in terms of all the facts, evidence, and law in this case.

26. Further, on perusal of the record of the appeal, it transpires that the respondent-accused has established his innocence before the Trial Court and that, after due appreciation of the oral as well as documentary evidence and other material placed on record, the Trial Court has rightly passed the impugned judgment and order of acquittal. The findings recorded by the Trial Court are just, proper and in accordance with the settled principles of law and, therefore, no interference is warranted by this Court.

27. It is well settled by catena of decisions that the Appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded. However, Appellate Court must bear in mind that in case of

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acquittal there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the trial Court.

28. Further, if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the trial Court. Further, while exercising the powers in appeal against the order of acquittal, the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the Appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the Appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether the accused are connected with the commission

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of the crime with which he is charged.

29. The scope and principles are enunciated by the Hon'ble Apex Court in case of ***Chandrappa and others Vs. State of Karnataka*** reported in ***(2007) 4 SCC 415***, more particularly ***paragraph Nos. 42 and 43***, which was subsequently re-affirmed by the Hon'ble Apex Court ***Rajesh Prasad Vs. State of Bihar and another***, reported in ***[2022] 3 SCC 471***, wherein, the Hon'ble Apex Court has enunciated the general principles in case of acquittal, more particularly in ***paragraph No. 26*** the general principles are set out by the Hon'ble Apex Court based upon various decisions of the Hon'ble Apex Court. Then in case of ***Babu Sahebagouda Rudragoudar Vs. State of Karnataka, reported in AIR 2024 SC 2252 = (2024) 8 SCC 149,*** the Hon'ble Apex Court has dealt with the similar issue, more particularly, in ***paragraph Nos. 37 to 40.*** Hence, I am in complete agreement with the findings recorded by the trial Court.

30. It is also worthwhile to refer to the recent decision of the Hon'ble Supreme Court in the case of ***Ramesh vs. State of Karnataka, reported in [2024] 9 SCC 169***, wherein the Hon'ble Supreme Court has held and observed in paras-20 and 21 as under:-

> *"20. At this stage, it would be relevant to refer to the general principles culled out by this Court in Chandrappa and others vs. State of Karnataka , regarding the power of the appellate Court while dealing with an appeal against a judgment of acquittal. The principles read thus:*
>
> *"42. .... (1) An appellate court has full power to review,*

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reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasize the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

21. In Rajendra Prasad v. State of Bihar, a three-Judge Bench of this Court pointed out that it would be essential for the High Court, in an appeal against acquittal, to clearly indicate firm and weighty grounds from the record for discarding the reasons of the Trial Court in order to be able to reach a contrary conclusion of guilt of the accused. It was further observed that, in an appeal against acquittal, it would not be legally sufficient for the High Court to take a contrary view about the credibility of witnesses and it is absolutely imperative that the High Court convincingly finds it well-nigh impossible for the Trial Court to reject their testimony. This was identified as the quintessence of the jurisprudential aspect of criminal justice. Viewed in this light, the brusque approach of the High Court in dealing with the appeal, resulting in the conviction of Appellant Nos. 1 and 2, reversing the cogent and well-considered judgment of acquittal by the Trial Court giving them the benefit of doubt, cannot be sustained."

31. Considering the entire evidence on record, it clearly appears that there is no credible evidence to connect the

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present accused with the alleged crime and the evidence on record is not so convincing to prove beyond reasonable doubt that the accused has committed the alleged crime. Therefore, the accused cannot be convicted on the evidence on record.

32. On perusal of the impugned judgment and order, it clearly transpires that the trial Court has not committed any error of fact and law in appreciating the evidence on record and in acquitting the accused from the charges levelled against them. Even on re-appreciation of the evidence, it clearly transpires that the prosecution has miserably failed to prove the charge levelled against the accused beyond reasonable doubt. Therefore, the impugned judgment and order of the trial Court is sustainable and the present appeal is liable to be dismissed.

33. In view of the above, the present appeal is devoid of merits and it deserves to be dismissed. Resultantly, it is dismissed. The impugned judgment and order of acquittal passed by the Trial Court is hereby confirmed. Bail bond stands cancelled. Record and proceedings be sent back to the concerned Trial Court forthwith.

Sd/-
(HEMANT M. PRACHCHHAK,J)

SURESH SOLANKI

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