Ritesh Kumar And Anr vs The State Of Bihar on 8 October, 2026

Author: Sandeep Kumar

Bench: Sandeep Kumar

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.249 of 2014
CNR No. BRHC010611092014
Arising Out of PS. Case No.-662 Year-2011 Thana- MUZAFFARPUR TOWN District- Muzaffarpur

==========

1. Ritesh Kumar, son of Sri Chandeshwar Thakur, Resident of Village- Khairi, O.P. Waini P.S.-Tajpur, District- Samastipur.
2. Robin Rai @ Naveen Rai, son of Late Asharfi Rai, Resident of village- Jitwarpur Chouth, P.S. Mufassil, District- Samastipur.

... ... Appellants

Versus

The State Of Bihar

... ... Respondent

==========

Appearance :
For the Appellants : Mr. Bhavesh Kumar, Advocate
For the Respondent : Mr. Abhay Kumar, APP

==========

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

C.A.V. JUDGMENT
Date : 08-10-2026

In the present appeal, the appellants have challenged the judgment of conviction dated 08.05.2014 and the order of sentence dated 13.05.2014 passed by the learned 6 th Additional Sessions Judge, Muzaffarpur, in Trial No. 08 of 2013, arising out of Muzaffarpur Town P.S. Case No.662 of 2011, whereby the appellants have been convicted for the

offence punishable under Section 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "N.D.P.S. Act") and have each been sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs. 25,000/-, in default of payment of fine, they have further been sentenced to undergo rigorous imprisonment for six months.

The appellants were acquitted of the charge under Section 22 of

the N.D.P.S. Act.

2. The prosecution case, as set out in the fardbeyan of of official informant Vijendra Kumar Shahi (P.W.-7), the then Officer-in-Charge of Town Police Station, Muzaffarpur, recorded on 23.12.2011 at 1:30 P.M. at the campus of Shyam Cinema Hall, is that at about 11:15 A.M. on that day he received a secret information that some criminals were going to assemble at Shyam Cinema Hall with a view to commit some offence. He conveyed the information to Sunil Kumar (P.W.-3), Officer-in-Charge, Brahmpura police station and to Madan Singh (P.W.-4), P.S.I., Mithanpura police station and requested them to assist him. Thereafter, at about 11:45 A.M., the informant, along with the said officers, Raman Kumar Singh, P.S.I. (P.W.-6), Ramakant Singh, Hawaldar (P.W.-5) and four

members of the S.A.P., proceeded to Shyam Cinema Hall by police jeep, where a Kashmiri Mela was going on. The police party is said to have noticed two persons standing in a suspicious manner behind a stall of the Mela, who attempted to flee on seeing the police but were apprehended, who disclosed their names as Robin Rai @ Naveen Rai and Ritesh Kumar. It is alleged that on search being made in the presence of two independent witnesses, 500 grams of charas was recovered

from the possession of each of them.

3. On the basis of the said fardbeyan, Muzaffarpur Town P.S. Case No. 662 of 2011 was registered on 23.12.2011

for the offences under Sections 20 and 22 of the N.D.P.S. Act. The investigation was conducted by Raman Kumar Singh, P.S.I. (P.W.-6), who was himself a member of the raiding party, and charge-sheet was submitted against the appellants. Cognizance of the offences was taken by the learned Sessions Judge, Muzaffarpur, on 19.03.2013, whereafter the case was transferred to the court of the learned 6 th Additional Sessions Judge, Muzaffarpur. Charges were framed on 01.04.2013 under Sections 20(b)(ii)(B) and 22 of the N.D.P.S. Act, which were amended on 06.03.2014. The appellants pleaded not guilty and claimed to be tried.

4. During the course of trial, altogether seven witnesses were examined in support of the prosecution case, which are as under :-

P.W.-1 Neeraj Kumar @ Guddu (seizure list witness) P.W.-2 Shyam Yadav (seizure list witness) P.W.-3 Sunil Kumar, Officer-in-Charge, Brahmpura P.S. (member of the raiding party) P.W.-4 Madan Kumar Singh, P.S.I., Mithanpura P.S. (member of the raiding party) P.W.-5 Ramakant Singh, Hawaldar (member of the raiding party) Patna High Court CR. APP (SJ) No.249 of 2014 dt.08-10-2026 4/40 P.W.-6 Raman Kumar Singh, P.S.I. (member of the raiding party and Investigating Officer) P.W.-7 Vijendra Kumar Shahi, Officer-in-Charge, Town P.S. (informant himself)

5. Apart from the oral evidence, the following documents were exhibited on behalf of the prosecution :-

Exhibit-1, 1/1 Signatures of P.W.-1 and P.W.-2 on the seizure list Exhibit-2 Fardbeyan Exhibit-3 Seizure list Exhibit-4 Report of the Forensic Science Laboratory.

6. The contraband said to have been seized from the appellants was not produced before the learned trial Court at any stage of the trial. On behalf of the defence, the order dated 23.12.2011 passed by the learned Chief Judicial Magistrate, Muzaffarpur, in Misc. Case No. 48 of 2011 was exhibited as Exhibit-A.

7. After completion of the prosecution evidence, the statements of the appellants were recorded under Section 313 of the Code of Criminal Procedure (for short "Cr.P.C."), in which they denied the allegations and stated that they are innocent and have been falsely implicated. The specific defence of the appellant Ritesh Kumar, as noticed by the learned trial Court, is that he had been picked up by the informant on Patna High Court CR. APP (SJ) No.249 of 2014 dt.08-10-2026 5/40 15/16.12.2011 and kept in alleged illegal custody and for which his wife, Sangam Devi, had instituted Misc. Case No. 48 of 2011 before the learned Chief Judicial Magistrate, Muzaffarpur. On 23.12.2011, upon the said case preferred by the wife of appellant-Ritesh Kumar, the learned Chief Judicial Magistrate, Muzaffarpur had called for a report from the informant, and the informant thereupon instituted the present case and forwarded the appellants on false allegations. No oral evidence was adduced on behalf of the defence. The trial Court after appreciating the evidence and hearing the parties passed the impugned judgment of conviction and order of sentence, as stated above.

8. Thereafter, the appellants were taken in custody. This appeal was admitted on 10.06.2014 and, vide order dated 21.07.2014, the appellants were directed to be released on bail, they having by then remained in custody for about two years and seven months. Thereafter, vide order dated 07.04.2026 passed in a batch of appeals in which the appellants were unrepresented, a Coordinate Bench of this Court, in compliance with the directions of the Hon'ble Supreme Court in Bhola Mahto vs. State of Jharkhand reported as 2026 SCC OnLine SC 430, directed notices to be served upon the Patna High Court CR. APP (SJ) No.249 of 2014 dt.08-10-2026 6/40 appellants through the Superintendent of Police concerned. The State has filed a counter affidavit on 25.03.2026 bringing on record the criminal antecedents of the appellants said to have been accumulated after their release on bail. The appeal was thereafter heard on merits.

9. The learned counsel for the appellants, at the outset, has submitted that the impugned judgment is unsustainable since it is entirely based on surmises. It has been submitted on behalf of the appellants that the Investigating Officer (P.W.-6) was himself a member of the raiding party, which is a vital irregularity vitiating the entire investigation, the search and seizure were not made in the presence of a Magistrate or a Gazetted Officer as required and mandated by Section 50 of the N.D.P.S. Act, and the finding of the learned trial Court on this score is untenable. It has further been submitted that in the present case there has been a complete non-compliance with Section 52A of the N.D.P.S. Act, inasmuch as no inventory of the seized substance was prepared, no application was made to any Magistrate for certification of the inventory or for taking photographs, and no representative sample was drawn in the presence of a Magistrate, which renders the entire procedure of search and sampling a farce Patna High Court CR. APP (SJ) No.249 of 2014 dt.08-10-2026 7/40 which cannot be a basis for convicting the appellants. It has further been pointed out by the learned counsel for the appellants that although the seized alleged contraband sample is said to have been produced before the Court on 24.12.2011 and permission to send it for chemical examination was granted on

21.03.2012, it was received by the Forensic Science Laboratory only on 05.03.2013 i.e. after a lapse of about one year, and in whose custody the sample remained during the intervening period has remained a complete mystery, on account of which the report of the Forensic Science Laboratory loses all significance. It has also been pointed out that not only was the alleged contraband sample sent to the Forensic Science Laboratory after an unexplained and inordinate delay but its report was received only after the closure of evidence by the trial Court for which pertinently no supplementary Section 313 statement was ever recorded.

10. The learned counsel for the appellants has amply emphasised that in the present case the seizure list witnesses have not supported the seizure and have merely identified their own signatures. Lastly, it has been argued that the investigation having been conducted in a perfunctory manner and the prosecution has failed to prove its case beyond Patna High Court CR. APP (SJ) No.249 of 2014 dt.08-10-2026 8/40 reasonable doubt.

11. Learned A.P.P. for the State has supported the impugned judgment and has submitted that the official witnesses have consistently deposed about the recovery of 500 grams of charas from the possession of each of the appellants and they had no motive to implicate the appellants falsely. It has been submitted that their evidence cannot be discarded merely because the seizure list witnesses turned hostile. It has been emphasised that the recovery was a chance recovery to which Section 50 of the N.D.P.S. Act had no application. It has also been submitted that the sample of the seized contraband was produced before the trial Court in a sealed envelope on the very next day and was received by the Forensic Science Laboratory in the same sealed condition, whose report (Exhibit-4) confirms the presence of tetrahydrocannabinol and mere delay in sending the sample is not fatal where the seal was intact. Learned A.P.P. has also drawn attention to the counter affidavit setting out the criminal antecedents of the appellants and has submitted that the appellants deserve no leniency.

12. I have considered the submissions of the parties and perused the materials on record.

13. P.W.-1 Neeraj Kumar @ Guddu and P.W.-2 Patna High Court CR. APP (SJ) No.249 of 2014 dt.08-10-2026 9/40 Shyam Yadav, both employees of Shyam Cinema, are the independent witnesses in whose presence the search and seizure are said to have been made. Each of them has identified his signature on the seizure list, but each has stated that nothing was seized in their presence and that they do not know the contents of the seizure list. Neither has supported the factum of seizure, and both were declared hostile.

14. P.W.-3 Sunil Kumar, P.W.-4 Madan Kumar Singh, P.W.-5 Ramakant Singh, P.W.-6 Raman Kumar Singh and P.W.-7 Vijendra Kumar Shahi are the members of the raiding party. They have deposed, in substance, that on receipt of the secret information the raiding party proceeded to the campus of Shyam Cinema Hall, apprehended the appellants who attempted to flee, and recovered 500 grams of charas each from their possession. From the aforesaid witnesses, the learned trial Court has itself noticed that according to P.W.-3 (para 3), P.W.-4 (para

2) and P.W.-5 (para 3), the secret information did not relate to any narcotic substance at all, further according to P.W.-3 (para

1), P.W.-4 (para 4), P.W.-5 (para 1), P.W.-6 (para 15) and P.W.-7 (para 6), the members of the raiding party had no idea that the recovered article was charas until the appellants themselves so disclosed, furthermore that according to P.W.-3 (para 7) and Patna High Court CR. APP (SJ) No.249 of 2014 dt.08-10-2026 10/40 P.W.-5 (para 6) an option was given to the appellants to be searched in the presence of a Magistrate, whereas according to the informant - P.W.-7 no such option was given. The

learned trial Court had next also noted that none of the witnesses could say which member of the raiding party had arrested which appellant, and most of them stated that they had not arrested any accused and that, save for the fardbeyan of the informant, there is no documentary evidence of the presence of any other member of the raiding party at the place of occurrence and even no station diary entry of Town, Brahmpura or Mithanpura police stations having been produced during the trial. P.W.-6, the Investigating Officer, has deposed about the submission of the charge-sheet.

15. The orders of the learned Court below, referred to in the impugned judgment itself, show that the sample of the seized substance in a sealed envelope was produced before the Court on 24.12.2011 and permission to send the sample for chemical examination was granted on 21.03.2012. The aforesaid sample was received by the Forensic Science Laboratory, Patna, on 05.03.2013 and the report (Exhibit-4) is dated 06.02.2014.

16. Before turning to the evidence, it would be Patna High Court CR. APP (SJ) No.249 of 2014 dt.08-10-2026 11/40 apposite to notice the statutory provisions which bear upon the present case. Section 20(b)(ii)(B) of the N.D.P.S. Act punishes the possession of cannabis, in contravention of the Act, in a 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. The quantity of 500 grams of charas alleged against each appellant falls within that intermediate category. Section 52A(2) to 52A(4) of the N.D.P.S. Act, as it stood at the relevant time, read as under:-

> "52A(1)....
>
> (2). Where any narcotic drugs or psychotropic substances 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 narcotic drugs or psychotropic substances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs or psychotropic substances 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 narcotic drugs or psychotropic substances in any proceedings under this Act and make an application, to any Magistrate for the purpose of--

Patna High Court CR. APP (SJ) No.249 of 2014 dt.08-10-2026 12/40

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

(b) taking, in the presence of such Magistrate, photographs of such drugs or substances 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 or the Code of Criminal Procedure, 1973, every court trying an offence under this Act, shall treat the inventory, the photographs of narcotic drugs or psychotropic substances and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence."

17. Section 55 of the N.D.P.S. Act requires the officer-in-charge of a police station to take charge of and keep in safe custody, pending the orders of the Magistrate, all articles seized under the Act and delivered to him, and provides that all samples taken from such articles shall be sealed with the seal of the officer-in-charge of the police station.

18. The first contention, relating to Section 50 of the N.D.P.S. Act, may be decided at the outset. The secret Patna High Court CR. APP (SJ) No.249 of 2014 dt.08-10-2026 13/40 information was not about any narcotic substance and that the raiding party had no idea that the article recovered was charas until the appellants so disclosed. The Hon'ble Supreme Court in the case of State of Punjab vs. Balbir Singh reported as (1994) 3 SCC 299, had laid down, in paragraph 25, the following conclusion:-

> "25.The questions considered above arise frequently before the trial 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 Patna High Court CR. APP (SJ) No.249 of 2014 dt.08-10-2026 14/40 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 Patna High Court CR. APP (SJ) No.249 of 2014 dt.08-10-2026 15/40 the grounds of his belief.

To this extent these provisions are mandatory and contravention of 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 CrPC fails to strictly comply with the provisions of Sections 100 and 165 CrPC 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 CrPC namely Sections 100 and 165 CrPC and if there is no strict compliance with the provisions of CrPC 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 Patna High Court CR. APP (SJ) No.249 of 2014 dt.08-10-2026 16/40 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." (emphasis supplied).

19. Since the search having been made in a public place in the day time, Section 42 of the N.D.P.S. Act is also not attracted and rather the preset case was governed by Section 43. A profitable reference may be made to the decision of the Hon'ble Supreme Court in the case of Karnail Singh vs. State of Haryana reported as (2009) 8 SCC 539, wherein the Patna High Court CR. APP (SJ) No.249 of 2014 dt.08-10-2026 17/40 Hon'ble Constitution Bench held that the requirements of Section 42(1) and 42(2) of recording the information in writing and forthwith communicating it to the immediate official superior are attracted to a search of a building, conveyance or enclosed place. It was further held that total non-compliance therewith is impermissible while delayed compliance with a satisfactory explanation is acceptable, and a search in a public place is governed by Section 43, which prescribes no such requirement. Section 50 was not attracted to a chance recovery is, therefore, in consonance with the law laid down by the Hon'ble Supreme Court in Balbir Singh (supra). However, what is of significance is that two members of the raiding party, P.W.-3 and P.W.-5, nonetheless claimed that an option of search before a Magistrate had been offered to the appellants, a claim which

the informant himself, P.W.-7, has contradicted. If the recovery was in truth a chance recovery, there was no occasion to offer any such option, and the assertion by two of the official witnesses that it was offered is an improvement on a point which required none. The contradiction does not bear upon the applicability of Section 50, rather it bears upon the credibility of the official witnesses.

20. From the perusal of the records of the case Patna High Court CR. APP (SJ) No.249 of 2014 dt.08-10-2026 18/40 and the impugned judgment of conviction, the real questions in this appeal are three, first, whether the prosecution has proved the seizure of any article from the possession of the appellants in the manner as alleged, secondly, whether the prosecution has established that what was examined at the Forensic Science Laboratory, Patna was the article seized from the appellants and thirdly, whether there is admissible evidence that the article was charas. Unless each of these is answered in the affirmative, the presumption under Section 54 of the N.D.P.S. Act cannot be invoked and the conviction cannot be sustained.

21. On the first question, the prosecution case rests entirely upon the evidence of the members of the raiding party themselves. The genesis of the case is a secret information said to have been received by the official informant at the police station at 11:15 A.M., upon which officers of two other police stations were summoned and a police party proceeded by jeep to a place which, according to the witnesses themselves, is nearby from the police station. The information was not reduced to writing, no station diary entry of Town, Brahmpura or Mithanpura police stations was produced in the trial to show the receipt of the information, or the arrival of the officers of the other police stations or even the departure of the raiding party. Patna High Court CR. APP (SJ) No.249 of 2014 dt.08-10-2026 19/40 The learned trial Court has itself recorded that, except for the fardbeyan of the informant, there is nothing documentary to show that any other member of the party was present at the place of occurrence. Pertinently, these were documents in the exclusive possession of the prosecution, which could have been produced with no difficulty had the raid taken place as described.

22. At this juncture, reference may be made to the decision of the Division Bench of this Court in Ashraf Ali Ansari & Anr. vs. State of Bihar reported as 2025 SCC OnLine Pat 2640 = 2025(6) ILR(PAT) HC 397 wherein the Division Bench of this Court, dealing with a case in which the police had likewise proceeded on a secret information unconnected with narcotics and were said to have chanced upon charas, it was observed by the Division Bench that in order to make the prosecution's basis of acting on secret information strong and reliable the prosecution ought to have proved the said information through the written entries in the relevant registers of the concerned police stations, and the failure to make any attempt in that regard creates a doubt about the prosecution's story. The same consideration applies with full force in the present case.

Patna High Court CR. APP (SJ) No.249 of 2014 dt.08-10-2026 20/40

23. In the present case, the two independent witnesses whom the prosecution itself associated with the search, P.W.-1 and P.W.-2, have not supported the seizure. They have merely identified their own signatures. The learned trial Court was right in observing that, being employees of the cinema hall, there could be no objection to their selection as independent witnesses, but it is precisely for that reason that their evidence that nothing was seized in their presence, and that they do not know the contents of the seizure list on which their signatures appear, assumes greater significance. A profitable reference may be made to the decision of the Hon'ble Supreme Court in the case of Hari & Anr. vs. State of U.P. reported as (2021) 17 SCC 111, wherein the Hon'ble Supreme Court held that the evidence of a witness declared hostile is not effaced from the record, it may be acted upon to the extent it is found dependable. In the present case, the evidence of P.W.-1 and P.W.-2, to the extent

that their signatures were taken on a document, the contents of which they do not know and that no seizure took place in their presence, is wholly consistent with each other and is not shown to have been actuated by any motive. The effect of such evidence, in an N.D.P.S. prosecution, was considered by the Hon'ble Supreme Court in the case of Patna High Court CR. APP (SJ) No.249 of 2014 dt.08-10-2026 21/40 Jitendra & Anr. vs. State of M.P. reported as (2004) 10 SCC 562, in the following words :-

> "6. In our view, the view taken by the High Court is unsustainable. In the trial it was necessary for the prosecution to establish by cogent evidence that the alleged quantities of charas and ganja were seized from the possession of the accused. The best evidence would have been the seized materials which ought to have been produced during the trial and marked as material objects. There is no explanation for this failure to produce them. Mere oral evidence as to their features and production of panchnama does not discharge the heavy burden which lies on the prosecution, particularly where the offence is punishable with a stringent sentence as under the NDPS Act. In this case, we notice that panchas have turned hostile so the panchnama is nothing but a document written by the police officer concerned. The suggestion made by the defence in the cross-examination is worthy of notice. It was suggested to the prosecution witnesses that the landlady of the house in collusion with the police had lodged a false case only for evicting the accused from the house in which they were living. Finally, we notice that the investigating officer was also not examined. Against this background, to say that, despite the panch witnesses having turned hostile, the non-examination of the investigating officer and non-production of the seized drugs, the conviction under the NDPS Act can still be sustained, is far-fetched."

24. It is true, as submitted by learned A.P.P. for the State, that the evidence of official witnesses cannot be Patna High Court CR. APP (SJ) No.249 of 2014 dt.08-10-2026 22/40 rejected merely because they are police officers, and that the case of the prosecution cannot be thrown out solely because the independent witnesses have not supported it, as has been held by the Hon'ble Supreme Court in the case of Dharampal Singh vs. State of Punjab reported as (2010) 9 SCC 608. The limits of that proposition in a prosecution under the N.D.P.S. Act were explained by the Division Bench of this Court in Ashraf Ali Ansari (supra) in the following words:-

> "27. ...Though in a criminal case, particularly, in an offence relating to the recovery of prohibited contrabands, the case of the prosecution can not be thrown out entirely mainly owing to non- examination of the independent persons as prosecution witnesses, who are said to be the witnesses of search, seizure and sampling process but there must be some explanation for not producing such independent persons and the prosecution's negligence in not producing them can be taken into consideration particularly when there is non-compliance of the provisions of section 52A of the NDPS Act and also when there is strong circumstance creating a serious doubt about the sampling process. ..."

25. The present case stands on a stronger footing than the one before the Division Bench, for the reason that in the present case, the independent witnesses were not merely withheld but were duly examined and have denied that any seizure took place in their presence. Moreover, in the Patna High Court CR. APP (SJ) No.249 of 2014 dt.08-10-2026 23/40 present case, there is not only non-compliance with Section 52A of the N.D.P.S. Act but also a doubt surrounding the sample itself. It is trite that the proposition in the case of Dharampal Singh (supra) applies only where the evidence of the official witnesses is otherwise found trustworthy, and it is precisely here that the prosecution case falters. The official witnesses are at variance with one another on whether an option of search was

offered to the appellants. None of them could say which of them apprehended which appellant and most of them disclaimed having arrested anyone at all.

26. Further, in the present case, through a suggestion put to P.W.-6 in paragraph 4 of his cross-examination, the accused appear to admit the factum of search. In the considered opinion of this Court, the suggestion has been stretched beyond what it can bear. A suggestion put by counsel in cross-examination may, at the highest, indicate what the defence does not dispute, however it is not evidence of the prosecution's affirmative case, and it cannot supply proof of facts which the defence has disputed throughout. Even if it be assumed that the appellants did not dispute that they were subjected to a search, that assumption establishes neither that 500 grams of charas was recovered from each of them, nor that Patna High Court CR. APP (SJ) No.249 of 2014 dt.08-10-2026 24/40 the recovery was witnessed by the independent witnesses who have later denied it in the trial and were declared hostile, nor that the article recovered was a narcotic drug. The burden of establishing the search, the seizure and the identity of the substance lay squarely upon the prosecution, and it could not be discharged by reference to the line of cross-examination.

27. That brings this Court to the second question, which concerns the contraband itself and the sample said to have been drawn from it. The position on the record is that the seized substance was never produced before the learned trial court, and no material exhibit was marked and only a sample in sealed cover was produced before the trial court. Further, no inventory of the seized substance was prepared and no application was made to any Magistrate under Section 52A(2) of the N.D.P.S. Act for certification of an inventory, for photographs, or for drawing of representative samples in the presence of a Magistrate. The sample which was eventually sent for examination was one drawn by the police themselves. A sealed envelope said to contain the sample was produced before the court on 24.12.2011, and permission to send it for chemical examination was granted on 21.03.2012 but it was received at the Forensic Science Laboratory only on 05.03.2013. No Patna High Court CR. APP (SJ) No.249 of 2014 dt.08-10-2026 25/40 witness has deposed as to where the sample remained during the period of nearly a year between the grant of permission and its receipt at the laboratory, who carried it there, or in what condition. Pertinently, no malkhana register was produced and no malkhana in-charge or carrier was ever examined. Furthermore, no evidence was even led that any specimen impression of the seal was sent to the laboratory for comparison.

28. The requirements of Section 52A of the N.D.P.S. Act were explained by the Hon'ble Supreme Court in the case of Union of India vs. Mohanlal & Anr. reported as (2016) 3 SCC 379 as under:-

> "16. Sub-section (3) of Section 52-A requires that the Magistrate shall as soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officer-in-charge of the police station or the officer empowered, the officer concerned is in law duty- bound to approach the Magistrate for the purposes mentioned above including grant of permission to draw representative samples in his presence, which samples will then be enlisted and the correctness of the list of samples so drawn certified by the Magistrate. In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct."

29. The consequence of a failure to produce the seized substance, or to connect the sample examined with the Patna High Court CR. APP (SJ) No.249 of 2014 dt.08-10-2026 26/40 substance seized, has been considered by the Hon'ble Supreme Court in a consistent line of decisions. In the case of Vijay

Jain vs. State of M.P. reported as (2013) 14 SCC 527, the Hon'ble Supreme Court after referring to Jitendra (supra) and Ashok vs. State of M.P. reported as (2011) 5 SCC 123, held as under :-

> "10. On the other hand, on a reading of this Court's judgment in Jitendra case [Jitendra v. State of M.P., (2004) 10 SCC 562 : 2004 SCC (Cri) 2028] , we find that this Court has taken a view that in the trial for an offence under the NDPS Act, it was necessary for the prosecution to establish by cogent evidence that the alleged quantities of the contraband goods were seized from the possession of the accused and the best evidence to prove this fact is to produce during the trial, the seized materials as material objects and where the contraband materials alleged to have been seized are not produced and there is no explanation for the failure to produce the contraband materials by the prosecution, mere oral evidence that the materials were seized from the accused would not be sufficient to make out an offence under the NDPS Act particularly when the panch witnesses have turned hostile. Again, in Ashok [Ashok v. State of M.P., (2011) 5 SCC 123 :
>
> (2011) 2 SCC (Cri) 547] this Court found that the alleged narcotic powder seized from the possession of the accused was not produced before the trial court as material exhibit and there was no explanation for its non-production and this Court held that there was therefore no evidence to connect the forensic report with the substance that was seized from the possession of the appellant."

Patna High Court CR. APP (SJ) No.249 of 2014 dt.08-10-2026 27/40

30. Subsequently, in the case of Vijay Pandey vs. State of U.P. reported as (2019) 18 SCC 215, the Hon'ble Supreme Court held:-

> "8. The failure of the prosecution in the present case to relate the seized sample with that seized from the appellant makes the case no different from failure to produce the seized sample itself. In the circumstances the mere production of a laboratory report that the sample tested was narcotics cannot be conclusive proof by itself. The sample seized and that tested have to be co-related. The observations in Vijay Jain v. State of M.P. (2013) 14 SCC 527 :
>
> (2014) 4 SCC (Cri) 276] , as follows are considered relevant : (SCC p. 531, para 10) "10. On the other hand, on a reading of this Court's judgment in Jitendra case [Jitendra v. State of M.P., (2004) 10 SCC 562 : 2004 SCC (Cri) 2028] , we find that this Court has taken a view that in the trial for an offence under the NDPS Act, it was necessary for the prosecution to establish by cogent evidence that the alleged quantities of the contraband goods were seized from the possession of the accused and the best evidence to prove this fact is to produce during the trial, the seized materials as material objects and where the contraband materials alleged to have been seized are not produced and there is no explanation for the failure to produce the contraband materials by the prosecution, mere oral evidence that the materials were seized from the accused would not be sufficient to make out an offence under the Patna High Court CR. APP (SJ) No.249 of 2014 dt.08-10-2026 28/40 NDPS Act particularly when the panch witnesses have turned hostile. Again, in Ashok [Ashok v. State of M.P., (2011) 5 SCC 123 : (2011) 2 SCC (Cri) 547] , this Court found that the alleged narcotic powder seized from the possession of the accused was not produced before the trial court as material exhibit and there was no explanation for its non-production and this Court held that there was therefore no evidence to connect the forensic report with the substance that was seized from the possession of the appellant."

31. In Union of India vs. Jarooparam reported as (2018) 4 SCC 334, where the bulk quantity of the seized contraband was not produced and the independent witnesses had turned hostile, the Hon'ble Supreme Court observed that the omission to produce the bulk quantity would create a doubt in the mind of the Court on the genuineness of the samples drawn and the absence of a proper explanation from the prosecution significantly undermines its case and reduces the evidentiary value of the statements made by the witnesses. In the case of Mohammed Khalid & Anr. vs. State of Telangana reported as (2024) 5 SCC 393 : AIR Online 2024 SC 134, the Hon'ble Supreme Court, upon finding that no witness or document had been produced to establish the safe keeping of the samples from the time of seizure till they reached the laboratory and that no Patna High Court CR. APP (SJ) No.249 of 2014 dt.08-10-2026 29/40 proceeding under Section 52A had been undertaken, held that the report of the Forensic Science Laboratory is nothing but a waste paper and cannot be read in evidence. The same view was taken in the case of Simarnjit Singh vs. State of Punjab reported as (2024) 14 SCC 222 = AIR 2023 SC (Supp) 1010.

32. Learned A.P.P. has relied upon the principle, recognized in Hardip Singh vs. State of Punjab reported as (2008) 8 SCC 557, that delay in sending the sample to the laboratory is not by itself fatal. In the considered opinion of this Court, the reliance is misplaced. In Hardip Singh (supra), the recovery was effected in the presence of a Deputy Superintendent of Police who affixed his own seal, the officer- in-charge of the police station was examined and deposed that the case property remained with him with seals intact until it was deposited with the Chemical Examiner, the carrier was examined, and it was proved that the seals were intact when the parcels reached the Examiner. It was on that evidence that the Hon'ble Supreme Court held that a delay of forty days had caused no prejudice. Not one of those links exists in the present case. The question is not one of delay simpliciter but of a complete absence of evidence as to the custody of the sample for the greater part of a year.

Patna High Court CR. APP (SJ) No.249 of 2014 dt.08-10-2026 30/40

33. The Hon'ble Supreme Court has, in the case of Bharat Aambale vs. State of Chhattisgarh reported as (2025) 8 SCC 452, held that non-compliance with the procedure under Section 52A of the N.D.P.S. Act is not, by itself, fatal to the prosecution. The decision, however, lays down with equal clarity the consequences which follow where the foundational facts of non-compliance are established. The conclusions summarised in paragraph 56 of the said decision include the following:-

> "56.5. Mere non-compliance of the procedure under Section 52-A 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.
>
> xxx 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 Patna High Court CR. APP (SJ) No.249 of 2014 dt.08-10-2026 31/40 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 52-A, 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 52-A 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 52-A 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."

34. In the present case, the non-compliance with Section 52A is not a matter of inference, rather it is apparent from the prosecution's own record, which discloses no inventory, no application to a Magistrate, no certification and no Magistrate-supervised sampling. The foundational facts having been laid, the onus shifted to the prosecution to prove beyond reasonable doubt either substantial compliance or that the non- compliance did not affect its case. The prosecution has done neither. There is no physical evidence at all, the bulk having never been produced before the Court and the one sample which was drawn by the police, remained unaccounted for over a period of about a year and thereafter reached the laboratory after Patna High Court CR. APP (SJ) No.249 of 2014 dt.08-10-2026 32/40 the charge-sheet had been submitted. Moreover, the independent witnesses deny the seizure. These are precisely the discrepancies in the physical evidence rendering the prosecution's case doubtful, which may not have been there had such compliance been done, within the meaning of paragraph 56.5 of the decision in the case of Bharat Aambale (supra). Subsequent to Bharat Aambale (supra), the Hon'ble Supreme Court in Nadeem Ahamed vs. State of West Bengal, arising out of SLP (Crl.) Nos. 9446-9447 of 2025, reported as Neutral Citation 2025 INSC 993 has reiterated :-

"29. In view of the above discussion, this Court is compelled to hold that there has been a complete and unexplained failure to adhere to the requirements of Section 52A. Neither representative samples were drawn in the presence of a Magistrate, nor was the inventory list prepared and certified, as required by law. These lapses strike at the very root of the prosecution case, rendering the integrity of the seizure and sampling process wholly doubtful.

30. We may hasten to add that the procedure under Section 52A of the NDPS Act has not been considered to be mandatory by this Court, but the facts taken cumulatively, i.e., the non-drawing of the samples in light of the Standing Order no. 1 of 1989, and the complete non-compliance of Section 52A of the NDPS Act, makes the entire procedure of seizure and sampling a total farce, and thereby, unworthy of credence."

35. This Court has applied the same principles Patna High Court CR. APP (SJ) No.249 of 2014 dt.08-10-2026 33/40 in Surendra Sah @ Surender Sah Kanu vs. State of Bihar, Criminal Appeal (SJ) No. 762 of 2021, decided on 06.05.2025, in Vijay Mahto @ Bijay Mahto vs. State of Bihar, Criminal Appeal (SJ) No. 474 of 2006, decided on 12.08.2025, and in Bihari Lal vs. State of Bihar & Anr., Criminal Appeal (SJ) No. 4098 of 2024, decided on 20.07.2026, in each of which the non-production of the malkhana register, the non-examination of the person in whose custody the seized article and the sample remained, and the absence of Magistrate-supervised sampling were held, cumulatively with the other infirmities therein, to be fatal to the prosecution. The decisions in which this Court has declined to treat non-compliance with Section 52A as fatal, such as Pappu Dubey vs. State of Bihar, Cr. App. (SJ) No. 4936 of 2024, decided on 03.09.2026, were cases in which the sealed contraband was produced before the trial court and opened in its presence, the samples had been drawn before a Magistrate, and the other evidence was found to be cogent and trustworthy. The present case bears no resemblance to them.

36. The third question concerns the proof that the article was charas. The only material is that the accused themselves disclose to the police party that the recovered contraband is charas otherwise the police party had no idea Patna High Court CR. APP (SJ) No.249 of 2014 dt.08-10-2026 34/40 about the charas. The members of the raiding party were police officers, and a statement made to them by a person in their custody that the article recovered from him was charas is a confession to a police officer, which is barred by Section 25 of the Indian Evidence Act, 1872. In Tofan Singh vs. State of Tamil Nadu reported as (2021) 4 SCC 1, a three-Judge Bench of the Hon'ble Supreme Court answered the reference before it in the following terms :-

> "158. We answer the reference by stating:
>
> 158.1 That the officers who are invested with powers under section 53 of the NDPS Act are "police officers" within the meaning of section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.
>
> 158.2 That a statement recorded under section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act."

37. If a confession made to an officer merely invested with the powers of an officer-in-charge of a police station is inadmissible, a confession made to officers who are police officers in every sense of the term is a fortiori so. A Division Bench of this Court, in Bijoy Roy & Anr. vs. Union of Patna High Court CR. APP (SJ) No.249 of 2014 dt.08-10-2026 35/40 India, Cr. App. (DB) No. 702 of 2023, decided on 08.07.2025, following its earlier decision in Litu Das vs. Union of India, Cr. App. (DB) No. 203 of 2021, decided on 27.06.2023, has held that disclosures said to have been made by the accused to the officers effecting the recovery cannot be taken into account for conviction. The alleged disclosure by the appellants has, therefore, to be eschewed altogether. Therefore, what remains is Exhibit-4.

38. Even assuming the report to have been duly proved and put to the appellants, it establishes no more than that the contents of an envelope received at the laboratory on 05.03.2013 contained tetrahydrocannabinol. For the reasons already recorded, there is no evidence connecting that envelope with anything seized from the appellants on 23.12.2011, and the report cannot, by itself, be conclusive proof as held by the Hon'ble Supreme Court in Vijay Pandey (supra).

39. Two further aspects remain. The first is the contention that the investigation by P.W.-6, a member of the raiding party, vitiates the trial. In Mukesh Singh vs. State (Narcotic Branch of Delhi) reported as (2020) 10 SCC 120, the Hon'ble Constitution Bench had held that the investigation by the informant or complainant himself does not by itself vitiate Patna High Court CR. APP (SJ) No.249 of 2014 dt.08-10-2026 36/40 the trial, and that bias or unfairness has to be established on the facts of each case, the question being one of weight to be attached to the evidence where the prosecution rests upon the testimony of the officers concerned. In this regard reference may also be made to the decision of the Hon'ble Supreme Court in the case of State vs. V. Jayapaul reported as (2004) 5 SCC

223. In the present case P.W.-6 was not the informant, and this Court does not find that his investigation was vitiated on that ground alone, but in a case in which every substantive witness is a member of the raiding party, the circumstance that the investigation too was conducted by one of them deprives the prosecution of even that measure of independent verification which an investigation by an officer unconnected with the raid would have supplied.

40. The second aspect is the defence founded upon Exhibit-A. The standard of proof which the law exacts from an accused is only that of preponderance of probabilities. As held in Dharampal Singh (supra) :-

> "12. ... ... Standard of proof expected from the prosecution is to prove possession beyond all reasonable doubt but what is required to prove innocence by the accused would be preponderance of probability. Once the plea of the accused is found probable, discharge of initial burden by the prosecution will not nail him with offence. Offences Patna High Court CR. APP (SJ) No.249 of 2014 dt.08-10-2026 37/40 under the Act being more serious in nature higher degree of proof is required to convict an accused."

41. Learned A.P.P. had contended that, the recovery of the contraband from the possession of the appellants having been proved by the official witnesses, the presumptions under of the N.D.P.S. Act were rightly invoked by the learned trial Court. The contention does not commend itself to this Court. The presumption under the N.D.P.S. Act arises only upon proof of possession of a narcotic drug, and it is for the prosecution first to establish, by evidence which inspires confidence, that the contraband was seized from the conscious possession of the accused and that the substance so seized was in fact a narcotic drug. It is only thereafter that the onus shifts to the accused to account for such possession. The point as to when the presumption comes into play was considered by the Hon'ble Supreme Court in Rakesh Kumar Raghuvanshi vs. State of M.P. reported as 2025 SCC OnLine SC 122, wherein it has been held as under :-

> "14. Thus, before the Court holds the accused guilty of the offence under the NDPS Act, possession is something that the prosecution needs to establish with cogent evidence. If the accused is found to be in possession of any contraband which is a narcotic drug, it is for the accused to account for such possession satisfactorily, if not, the presumption Patna High Court CR. APP (SJ) No.249 of 2014 dt.08-10-2026 38/40 under Section 54 comes into place.
>
> ...
>
> 16. Therefore, as envisaged by the provision itself, unless and until the contrary is proved in trials of cases involving offences coming within the purview of the NDPS Act, it may be presumed that the accused has committed an offence under the Act in respect of any articles prohibited to be possessed by him and for the possession of which, he failed to account satisfactorily. Therefore, it is the burden of the prosecution to establish that the contraband was seized from the conscious possession of the accused. Only when that aspect has been successfully proved by the prosecution, the onus will shift to the accused to account for the possession legally and satisfactorily."

42. In the present case, the seizure is unsupported by any independent witness or by any documentary record, the sample remained unaccounted for over a period of about a year and the only direct evidence of the nature of the substance is a confession which is inadmissible in law. The foundational fact upon which the presumption depends, i.e., the seizure of a narcotic drug from the conscious possession of the appellants has, therefore, not been established, and the question of the appellants being called upon to account for such possession therefore does not arise as held by the Hon'ble Supreme Court in Bharat Aambale (supra) which is quoted herein above.

Patna High Court CR. APP (SJ) No.249 of 2014 dt.08-10-2026 39/40

43. The N.D.P.S. Act prescribes stringent punishment and, for that very reason, the safeguards it provides are to be scrupulously observed and the standard of proof it demands is exacting as held by

the Hon'ble Supreme Court in the case of State of Punjab vs. Baldev Singh reported as (1999) 6 SCC 172, specifically paragraph no. 57. Viewed cumulatively, the infirmities noticed above, i.e., the absence of any contemporaneous record of the secret information, or of the constitution of the raiding party or of its departure, the failure of both independent witnesses to support the seizure, the contradictions amongst the official witnesses, the non- production of the seized substance, the complete and total non- compliance with Section 52A, the unexplained custody of the sample for nearly a year, the reliance upon an inadmissible confession to prove the nature of the substance, the investigation by a member of the raiding party and the unanswered circumstance disclosed by Exhibit-A, together, leave the prosecution case, in the considered opinion of this Court, far short of proof beyond reasonable doubt. When that question is asked, the answer is that the prosecution has failed to prove that any narcotic substance was seized from the appellants on 23.12.2011, and the benefit of that failure must go to the Patna High Court CR. APP (SJ) No.249 of 2014 dt.08-10-2026 40/40 appellants.

44. In the result, for the foregoing reasons and discussions, this appeal is allowed. The judgment of conviction dated 08.05.2014 and the order of sentence dated 13.05.2014 passed by the learned 6th Additional Sessions Judge, Muzaffarpur, in Trial No. 08 of 2013, arising out of Muzaffarpur Town P.S. Case No. 662 of 2011, are hereby set aside. The appellants are acquitted of the charge levelled against them.

45. The appellants are on bail. Therefore, they are discharged from the liabilities of their bail bonds. The amount of fine, if any, deposited by the appellants in terms of the impugned order of sentence shall be refunded to them.

46. Let the lower court records be sent back to the learned trial Court forthwith along with a copy of this judgment.

(Sandeep Kumar, J) pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	03.09.2026
Uploading Date	08.10.2026
Transmission Date	08.10.2026