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2026:GUJHC:24407-DB

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/CRIMINAL APPEAL NO. 1311 of 1999**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**
**and**
**HONOURABLE MR.JUSTICE D.N.RAY**

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| Approved for Reporting | Yes | No |
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H I MAJAMUDAR INTELLIGENCE OFFRICER
Versus
SANTOSH PANDURANG SETTY & ORS.

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Appearance:
MR CB GUPTA(1685) for the Appellant(s) No. 1
AFFIDAVIT OF SERVICE OF NOTICE NOT FILED for the Opponent(s)/Respondent(s) No. 1,3
NOTICE SERVED for the Opponent(s)/Respondent(s) No. 2

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CORAM:**HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**
and
**HONOURABLE MR.JUSTICE D.N.RAY**

**Date : 27/03/2026**

**JUDGMENT**
**(PER : HONOURABLE MR.JUSTICE D.N.RAY)**

1. The Present appeal is directed by the appellant, challenging the judgment and order of acquittal dated 7th September, 1999 passed by the learned Special Judge, Surat appointed under the NDPS Act, in Special Case (N.D.P.S.) No. 167 of 1994 whereby the learned Special Judge acquitted the accused persons – the opponents herein, for the offences punishable under Section 232(2) of the Criminal Procedure Code and Section 8(c), 20(b)(ii), 22, 23, 29 and 27A of NDPS



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Act.

2. Facts of the case, in nuce, are as under:-

2.1 The prosecution has instituted proceedings against the accused persons by filing a charge-sheet alleging commission of offences punishable under Sections 20(b)(ii), 22, 23, and 29, inter alia, of the Narcotic Drugs and Psychotropic Substances Act, 1985 (herein referred to as “the NDPS Act, 1985”). The case of the prosecution originates from intelligence inputs received by the officers of the Directorate of Revenue Intelligence (DRI), Mumbai, on 15.06.1994, indicating large-scale transportation and illicit trafficking of narcotic substances in and around Surat. Acting upon such information, officers of the DRI, Mumbai in coordination with DRI, Surat, undertook continuous surveillance and preliminary inquiry on 16.06.1994 and 17.06.1994.

2.2 Upon culmination of the said surveillance, on 18.06.1994 at about 09:40 hours, a joint team of DRI officers conducted search and seizure operations at a premises situated in Radha Building, behind Vimal Silk Mills, Kadodara, Taluka Palsana, District Surat. After complying with procedural requirements, including summoning independent panch witnesses, the officers allegedly recovered a substantial quantity of



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contraband substance weighing 1329 kilograms and 750 grams, packed in 48 bags, from the said premises, which was being used as a godown.

2.3 It is the case of the prosecution that, upon preliminary testing at the site using a field testing kit, the seized substance indicated positive results for hashish. Accordingly, the entire quantity was seized in accordance with law. Representative samples were drawn from the seized stock, out of which one sample was forwarded to the Forensic Science Laboratory, Ahmedabad on 24.06.1994 for chemical analysis. The report received therefrom opined that the substance was hashish/charas within the meaning of the provisions of the NDPS Act, 1985 and on botanical examination, it was identified as Cannabis Sativa.

2.4 During the course of the raid, Accused No. 2 was found present at the godown. As per the prosecution, the said premises had been taken on rent around 01.06.1994 by one Jaydeep Dhinoja from its owner, and was being utilized for storage purposes, including certain chemical drums. It is further alleged that the contraband substance had been transported and stored at the said premises on 17.06.1994 by the said Jaydeep Dhinoja along with another individual, after



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being offloaded from a truck onto a tempo near Kadodara Highway.

2.5 Upon further investigation, the DRI authorities are stated to have gathered material indicating involvement of other accused persons in the alleged offences relating to transportation, storage, and illicit trade of the seized contraband. Consequently, they were arraigned as accused, and a detailed complaint along with a charge-sheet, supported by documentary evidence and list of witnesses, came to be filed before the competent Special Court on 21.09.1994. The Court took cognizance of the matter, framed charges against the accused, and upon denial of the allegations, the matter proceeded to trial.

3. The learned Sessions Judge framed the following issues and answered the same, the translation of which is as under :-

> "1. Whether the prosecution has proved beyond doubt that the accused No 1 and 3 have violated the provisions of N.D.P.S Act either by hatching a criminal conspiracy or in collusion with each other obtained the seized quantity of hashish or produced and kept it in custody?
>
> 2. Whether the prosecution has proved beyond doubt that



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the accused No.1 (Santosh Shetty) has provided the accused No.3 (Harindra Paul) with secret code No. 517150 and other details to receive the delivery of the said quantity at Surat?

3. Whether the prosecution has proved beyond doubt that the accused No.2 (Yazdi Eruch Baria) and accused No.3 (Harindra Paul), in collusion of Mr. Jaydip Dhinoja, received the delivery of the seized quantity of Hashish in a Tempo from the Truck and stored it in the Godown ?

4. Whether the prosecution has proved beyond doubt that the accused No.2 (Yazdi Baria) was in conscious possession of the said quantity recovered during the search and seizure from the Godown on 18/06/1994?

5. Whether the prosecution, before, during and after the search and seizure, has followed mandatory provisions under section 42, section-50 and section-57 etc of the N.D.P.S act?

6. What Order?

6: My decision for the aforementioned issues are as follows.

1. In negative.

2. In negative.

3. In negative.

4. In negative.



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5. In negative.

6. As per final order.”

4. Thus, in order to decide the guilt of the accused persons, the findings on issue No.2 hereinabove are most relevant. We have been taken through the evidence in great detail by Mr. C. B. Gupta, learned Counsel appearing for the appellant-prosecution. Carefully sifting the evidence, we find that the attempt on the part of the prosecution was to prove that accused No.1 namely Santosh Shetty had given a secret code number (517150) and instructed the accused No.3 – Harinder Paul to take delivery of the hashish stock being transported in a truck. We have combed through the depositions of accused No.1, accused No.3, as well as depositions of PW9 – Dipakbhai Bhupatbhai Parekh – Exh.132. The entire prosecution story rests on the aforesaid depositions.

5. We find that the depositions of the accused persons have not been assigned exhibits. Therefore, we have to approach the same with utmost caution. PW-9 was declared hostile and was cross-examined by the prosecution. Despite the same, nothing can be attributed to PW-9 that the accused No.1-Santosh Shetty had obtained delivery of the hashish stock



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through accused No.3. PW-9 has categorically stated that he had been practicing as Chartered Accountant in Mumbai since 1987 and that he knew the accused No.1, having studied with him at Bharda School. However, PW-9 has not identified accused No.3-Harinder Paul. PW-9 has categorically submitted as under “it did not occur that I informed the DRI that Santosh had conveyed to me that the hashish had reached Surat and Harinder Paul has also reached there.” At this point, PW-9 was declared hostile and cross-examined at length. In cross-examination, PW-9 has stated that NCB officers had kept him in custody for three days and tortured him and the statements dated 01.07.1994, 05.07.1994 and 06.07.1994 were dictated by the said officers which came to be recorded only under the fear of detention. Apart from failing to identify Harinder Paul, PW-9 deny that accused No.1-Santosh Shetty confessed to the PW-9, his involvement regarding hashish stock in the present offence and previous Neral - Matheran narcotics case. Thus, no evidence has been produced by PW-9 by which it could be said that the PW-9 had supported the prosecution case even to the slightest extent.

6. To counter the allegations made by PW-9 that the officer



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had coerced and tortured PW-9 to make the aforesaid three statements, the prosecution has not examined the officers involved in recording the statements, to disprove PW-9's allegations. Thus, the aforesaid statements dated 01.07.1994, 05.07.1994 and 06.07.1994 are totally devoid of any evidentiary value. Hence, in our considered opinion, the prosecution has failed to prove that the accused No.1, by giving secret code no. 51750 had caused accused No.3 to take delivery of the hashish stock in question.

7. Having perused the impugned judgment particularly paragraph No. '27' thereof, we find that the learned Sessions Court had arrived at precisely these findings. Therefore, there is no reason whatsoever for us to upset the said findings and the eventual conclusion, namely that of acquittal of the accused persons.

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



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the 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



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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 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.

9. In light of the foregoing, this Court finds that the learned



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Special Judge has correctly recorded an order of acquittal. The prosecution has failed to discharge the burden of proving the charges beyond reasonable doubt. Upon an independent examination of the findings recorded by the learned Sessions Court, the same appear to be well-reasoned, lawful and in consonance with the evidence on record. Moreover, the learned counsel has not been able to demonstrate any manifest illegality, perversity or material infirmity in the reasoning adopted by the Sessions Court so as to warrant interference.

10. Further, upon appreciation of the evidence adduced by the prosecution, it emerges that the learned Sessions Court has rightly taken note of material discrepancies and contradictions which go to the root of the prosecution case. In absence of satisfactory proof establishing the guilt of the accused beyond reasonable doubt, no fault can be attributed to the Sessions Court for having acquitted the accused persons.

11. The Hon'ble Apex Court in its recent decision in the case of **Constable 907 Surendra Singh & Anr. v. State of**



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**Uttarakhand with Ashad Singh Negi v. State of Uttarakhand**, reported in **(2025) 5 SCC 433,** has enumerated the principles of treating appeals for acquittal and the legal position with regard to the scope of interference in an appeal against acquittal and also reiterated the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378, CrPC**,** as under:-

> *"40. Further, in H.D. Sundara v. State of Karnataka [H.D. Sundara v. State of Karnataka, (2023) 9 SCC 581: (2023) 3 SCC (Cri) 748] this Court summarised the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378CrPC as follows : (SCC p. 584, para 8)*
>
> > *"8. … 8.1. The acquittal of the accused further strengthens the presumption of innocence;*
> >
> > *8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;*
> >
> > *8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;*
> >
> > *8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and*
> >
> > *8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible."*



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*41. Thus, it is beyond the pale of doubt that the scope of interference by an appellate court for reversing the judgment of acquittal recorded by the trial court in favour of the accused has to be exercised within the four corners of the following principles:*

*41.1. That the judgment of acquittal suffers from patent perversity;*

*41.2. That the same is based on a misreading/omission to consider material evidence on record; and*

*41.3. That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record."*

12. Consequently, the present appeal, being devoid of merit, deserves to be dismissed and is accordingly dismissed. The judgment and order of acquittal dated 7th September, 1999 passed by the learned Special Judge, Surat under the NDPS Act, in Special Case (NDPS) No. 167 of 1994 is hereby affirmed. The bail bonds, if any, executed by the respondent-accused shall stand discharged. The record and proceedings be transmitted back to the concerned Trial Court forthwith.

13. Before parting, we are compelled to observe that the basic prosecution case is so utterly flawed, in spite of the massive commercial quantity of hashish involved in the present case that we have serious doubts as to the nature of the investigation conducted by the prosecution. In the present case, it involves the DRI and NCB. To give an example, the



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absurd case of the prosecution is that 1329 kg. of hashish was found from a rented premises. It is difficult to believe that the owner of the said premises has not even been examined. One Jaydeep Dhinoja, who has allegedly taken the premises on rent has not been arraigned as an accused. These lapses, apart from the ones noted in the impugned judgment and by us, hereinabove, seem to indicate either the utter lack of competence of the entire prosecution team or a deliberate attempt to protect the real accused persons. Unfortunately, the incident is 32 years old and we are unsure whether any investigation into the lapses would serve any purpose and therefore, we rest the case with these observations. It would however be open to the concerned authorities to take such action which they deem necessary and feasible under the circumstances.

**(HASMUKH D. SUTHAR,J)**

**(D.N.RAY,J)**

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