TRHC010008762025

(2026:THC:1419-DB)

HIGH COURT OF TRIPURA
AGARTALA

Crl. A(J) 43 of 2025

Shri Dharjya Kumar Jamatia
Son of Shri Jatindra Mohan Jamatia,
Of Tutabari, Garjanmura, P.S. Kakraban, District- Gomati, Tripura.

……**Appellant**(**s**)

Versus

State of Tripura

.....Respondent(**s**)

For the Appellant(s)	: Ms. Ayesha Saha Hirawat, Legal Aid Counsel.
For the Respondent(s)	: Mr. Raju Datta, PP Mr. S. Saha, Addl. P.P.
Date of hearing	: 07.10.2026.
Date of delivery of judgment & order	: 13.10.2026.
Whether fit for reporting	: Yes

HON'BLE JUSTICE DR. T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT
J U D G M E N T & O R D E R

[Dr. T. Amarnath Goud, J]

[1] Heard Ms. A.S. Hirawat, learned Legal Aid Counsel appearing for the appellant. Also heard Mr. S. Saha, learned Addl. P.P. representing the State.

[2] This present appeal is filed under Section 374 of the Code of Criminal Procedure, 1973 against the judgment & order of conviction and

sentence dated 12/09/2024, passed by the learned Special Judge (NDPS), North Tripura, Dharmanagar, in case no. Special (NDPS) 30 of 2021, convicting the appellant for commission of offence punishable u/s 20(b)(ii)(c) of NDPS Act to suffer rigorous imprisonment for 10(ten years) along with a fine of Rs. 1,00,000/- (one lakh) and in default of payment, to suffer imprisonment for a further period of 3(three) months.

[3] The prosecution story, in brief, is that on 06.09.2021 at about 09-15AM, an ASI Ajit Das, and another ASI Rajesh Bhattacharjee along with other staff of Churaibari PS were performing vehicle checking duty in front of CRB PS on the National Highway. In course of vehicle checking, ASI Rajesh Bhattacharjee gave signal to the driver of a 14 wheeler truck bearing No. PB 19-M-9376 to stop the vehicle. The present appellant, Dharjya Kumar Jamatia and one Dalveer Singh were the drivers of that vehicle and they informed that they were carrying goods in the vehicle. However, the team of police personnel suspected that both the drivers were carrying some contraband articles in the truck and on being interrogated, both stated that they were carrying dry ganja in that vehicle. Thereafter, ASI Rajesh Bhattacharjee immediately communicated the information to the duty officer at Churaibari PS and it was entered in the GD and subsequently, the SP, North Tripura and SDPO, Dharmanagar were informed.

[4] Upon receipt of such information, an SI Haradhan Bose along with SI Ajit Kanti Chakma along with a team of police personnel left the PS to verify the information. They reached at the spot and after sometime, SDPO, Dharmanagar also came there and gave authorization to ASI Rajesh Bhattacharjee and constable Jewel Deb to search the body of both the drivers and after the search a pre-search memo was prepared. The vehicle was searched and in course of that search, 89 packets of dry ganja were recovered from the vehicle and the total weight of the ganja was found 987 Kgs and the same was seized along with the vehicle and other articles in presence of witnesses. Thereafter, the said Dharjya Kr Jamatia, appellant herein and Dalveer Singh along with helper of the vehicle were detained and were brought to the CRB PS.

[5] Thereafter, the said SI Haradhan Bose in that respect lodged an ejahar with O/C of the PS and based on it CRB PS Case No.24 of 2021 was registered and SI Ajit Kanti Chakma was endorsed to do the investigation.

[6] The Investigating Officer (IO), on completion of investigation, submitted charge-sheet against accused persons namely Dharjya Kr. Jamatia, Dalveer Singh and Tanu Debbarma under Section 20(c) and 29 of the NDPS Act. Thereafter, charge-sheet was filed before the Court below and cognizance of offence was taken. During the proceeding, prosecution papers were supplied to the accused persons. Both sides were heard on framing of charge and on

finding prima facie material under section 20(c) of the NDPS Act, charge was framed against the accused persons namely Dharjya Kr. Jamatia and Dalveer Singh and the same was read over and explained to both the accused to which they pleaded not guilty and claimed to be tried. In addition, all the three accused were also charged under section 29 read with section 20(c) of the NDPS Act and it was read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

[7] The prosecution examined as many as 6 witnesses to bring home the charge. Thereafter, the accused Dalveer Singh remained absent without any step and the trial proceeded against the two other accused persons. Both the accused persons were individually examined under section 313 of Cr.P.C wherein they stated that the prosecution case is false and declined to adduce any witness from their side.

[8] Thereafter, upon hearing the arguments of both sides and on perusal of the material evidence on record, learned trial Court on 12.09.2024 in case No. Special (NDPS) 30 of 2021, sentenced the accused person, appellant herein in the following manner:

> "..... O R D E R
>
> 48. In the result, the prosecution has proved this case beyond all reasonable doubt against accused person Dhariya Kumar Jamatia. The accused is accordingly convicted under section 20(b)(ii)(C) of the NDPS Act.
>
> So far the other accused Tanu Debbarma is concerned the prosecution has failed to prove the case beyond all reasonable doubt against the accused. Hence, the accused person is acquitted from this case and he is set at liberty at once.

His surety is also discharged from the liability of the bail bond.

I have heard the convict Dhariya Kumar Jamatia on the question of sentence and he pleaded for mercy and claimed himself as innocent.

It has transpired from the discussion in the preceding paragraphs that the convict was caught with contraband ganja of commercial quantity while he was transporting it. Here we also need to keep in mind, that drugs and narcotic substances are becoming a menace for the society and it is affecting all classes of people including young children.

Considering the aforesaid facts, this Court is for the view that the act of the convict cannot be seen with leniency. This Court is also of the view that a sentence of imprisonment for a term of 10 years along with fine will suffice to render justice in this case.

The convict Dhariya Kumar Jamatia is accordingly sentenced to suffer rigorous imprisonment for 10(ten) years under section 20(b)(ii)(C) of the NDPS Act.

He is also sentenced to pay fine of Rs.01 lakh (Rupees one lakh) under section 20(b)(ii)(C) of the NDPS Act and in default of payment to suffer imprisonment for a further period of 3(three) months.

The period of detention undergone by the convict during the investigation and trial of this case shall be set off from the term of imprisonment.

Furnish a copy of this judgment free of cost to the convict.

Since the case will remain pending against accused Dalveer Singh no order is passed for disposal of the seized articles.…....."

[9] Aggrieved by the above-quoted sentence passed by the learned Court below, the appellant has preferred this present appeal seeking the following reliefs:

"i) Admit the Appeal;

ii) Call for the lower court case records of case no. Special (NDPS) 30 of 2021 from the court of the Ld. Special Judge, North Tripura Judicial District, Dharmanagar.

iii) Stay the execution of sentence;

iv) Notify the Public Prosecutor;

AND

v) After hearing, Your Lordships may be pleased to set aside/quash the impugned judgment and order of conviction and sentence dated 12/09/2024, passed by ******** the Ld. Special Judge, North Tripura

Judicial District, Dharmanagar, in case no. Special (NDPS) 30 of 20221....."

[10] Ms. A.S. Hirawat, learned Legal Aid Counsel submits that learned trial Court learned trial Court below convicted the appellant merely on conjectures and surmise and therefore, the order of conviction and sentence passed by the Court below is liable to be set aside/quashed. She contends that there was no prior specific information about the vehicle containing contrabands. Therefore, it was a chance recovery and the appellant has been convicted based on mere presumption and the learned trial Court below convicted the appellant on the basis of stock witnesses. She further contends that in column no.12 of the printed FIR there is over writing of the registration number of the vehicle but this fact was not at all considered by the learned trial Court below. It is submitted that Section 57 of the NDPS Act was not complied with since the report of arrest and seizure by the officer must be given to the immediate superior official within 48 hours after such arrest and seizure.

[11] It is also contended on behalf of the appellant that the contrabands were received through SDPO, Dharmanagar in TSFSL on 16.09.2021 but, those were examined during the period from 22.10.2021 to 03.11.2021. Thus, there has been an unexplanatory delay of 36 days in examining the contraband samples by the TSFSL and there is no whisper about where the contrabands were kept during this period. Contention has also been made on behalf of the accused appellant with regard to that register of Malkhana was not seized and

the in-charge of Malkhana was not examined which creates a strong doubt on the prosecution story but this fact was not considered by the learned trial Court below. Further, it is submitted that P.W. 6 in his cross-examination disclosed that in the first page of FIR, the vehicle no. is written PB-19M-9376 but in the second page, the number is written as PB-19M-9373 and in this respect he did not keep any note in the CD of this case. Learned Legal Aid Counsel appearing on behalf of the appellant, therefore, urges this Court to set aside the impugned order dated 12.09.2024 in case No. Special (NDPS) 30 of 2021 and in support of her argument, she has placed reliance on the following contents from judgments of the Hon'ble Apex Court:

1. *Mohan Lal v. State of Punjab* reported in ***(2018) 17 SCC 627*.**

> ".....9. Standing Order No. 1 of 88 issued by the Narcotics Control Bureau in clause 1.13 reads as follows:
>
> "Mode and time limit for dispatch of sample to Laboratory.
>
> The samples should be sent either by insured post or through special messenger duly authorised for the purpose. Dispatch of samples by registered post or ordinary mail should not be resorted to. Samples must be dispatched to the Laboratory within 72 hours of seizure to avoid any legal objection.
>
> (emphasis added)
>
> 10. The Drug Law Enforcement−Field Officers Hand Book issued by the Narcotics Control Bureau also provides that:
>
> "28. Were the seized goods and samples deposited in the Malkhana at the earliest opportunity after seizure, an acknowledgement receipt obtained from the Malkhana−in−Charge?
>
> 29. Were the samples sent to the designated laboratory for analysis and report within 72 hours of seizure?"
>
> (emphasis supplied)
>
> 11. In Noor Aga vs. State of Punjab, (2008) 16 SCC 417, under the NDPS Act, it was held:(SCC p.461, para 91)

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

12. Unlike the general principle of criminal jurisprudence that an accused is presumed innocent unless proved guilty, the NDPS Act carries a reverse burden of proof under Sections 35 and 54. But that cannot be understood to mean that the moment an allegation is made and the F.I.R. recites compliance with statutory procedures leading to recovery, the burden of proof from the very inception of the prosecution shifts to the accused, without the prosecution having to establish or prove anything more. The presumption is rebuttable. Section 35 (2) provides that a fact can be said to have been proved if it is established beyond reasonable doubt and not on preponderance of probability. The stringent provisions of the NDPS Act, such as Section 37, the minimum sentence of ten years, absence of any provision for remission, do not dispense with the requirement of the prosecution to establish a prima facie case beyond reasonable doubt after investigation, only after which the burden of proof shall shift to the accused. The case of the prosecution cannot be allowed to rest on a preponderance of probabilities……."

2. ***Vijay Pandey v. State of Uttar Pradesh*** reported in ***(2019) 18 CC 215*****.**

"…….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 vs. State of Madhya Pradesh, (2013) 14 SCC 527*, 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's case, 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 the case of Ashok, (2011) 5 SCC 123, 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."

9. *In Ashok vs. State of Madhya Pradesh, (2011) 5 SCC 123*, it was observed: (SCC p. 126, para 12)

> "12. Last but not the least, the alleged narcotic powder seized from the possession of the accused, including the appellant was never produced before the trial court as a material exhibit and once again there is no explanation for its non-production. There is, thus, no evidence to connect the forensic report with the substance that was seized from the possession of the appellant or the other accused."……"

[12] Per contra, Mr. S. Saha, learned Addl. P.P. appearing for the State respondent strongly opposes the submissions made on behalf of the appellant. He contends that the depositions of witnesses i.e. P.W.1, the driver and the P.W. 4, day labour who are the independent witnesses fully support the prosecution story since their statements corroborate the deposition of other official witnesses. He contends that the submission of the learned Legal Aid Counsel on behalf of the appellant that the learned trial Court below convicted the appellant only on the basis of stock witnesses is baseless. To support his contention, Mr. Saha, learned Addl. P.P. has placed reliance on the judgment of the Hon'ble Supreme Court passed in ***Nana Keshav Lagad v. State of Maharashtra*** reported in ***(2013) 12 SCC 721***. The relevant contents of the said judgment are quoted as under:

> "…….28. The learned counsel for the appellants placed reliance upon Vadivelu Thevar, AIR 1957 SC 614, to support the contention that since the conviction was based on the solitary evidence of P.W.4, without proper corroboration, the same cannot be sustained. As we have found that it was not based on the solitary statement of P.W.4 alone, but was also supported by other eyewitness viz., P.W.5, whose evidence merited acceptance on par with the evidence of P.W.4, apart

> from the medical evidence fully supporting the case of the prosecution, the said decision can have no application to the facts of this case……"

[13] It is further contended on behalf of the State that it is not open for the accused to raise an issue which has never been raised before the trial Court. Insofar as non-production of Malkhana register before the trial court is concerned, it is not necessary that the same would be fatal to the prosecution case when the offence of the accused under the NDPS Act is duly established on the basis of evidences before the trial Court. Learned Addl. P.P. further contends that even if the Malkhana register is not produced before the Court but, the same cannot make any difference because after drawing the samples before the CJM, the same were kept intact under properly sealed wax and thereafter, the same were sent to FSL after affixing seal, and FSL received the samples intact. In support of his submission, learned Addl. P.P. has placed reliance on the paragraph 11 of judgment dated 20.05.2026 passed by this Court in Crl.A.53 of 2025 and the same is quoted as under:

> "…..11. Regarding non-production of Malkhana register before the trial court during a trial is not necessarily fatal to the prosecution's case. On close scrutiny of the record, it appears that neither the seized articles nor the remaining of the samples has been produced before the Trial Court. Now the question that emerges is when there is legal evidence available on record of the recovery of contraband articles from the possession of the respondent which, on chemical examination, found to be ganja, and which has also not been rebutted by the respondent by cogent evidence, except stating that they had been falsely been implicated in this case, whether the same is unsustainable in law on the ground that recovered articles have not been produced in the Court. In view of this court, regarding safeguard of the seized item, viewing chance of tampering and also whether the recovered and sealed item reached to the chemical laboratory, from the materials available on record, this court do not find any such infirmity. To add, if Malkhana register has not been produced in the Court, it will not make any difference because after drawing samples before the JM, 1st

> Class the same were kept intact under seal and gala, the same were sent to SFSL after affixing seal, and SFSL received the samples intact and the same will reveal from Order dated 11.03.2022 passed by the learned trial court. In these circumstances, it is apparent that there was no opportunity to tamper with the impression of seal. That apart, the report of SFSL dated 25.04.2022 also shows that the yellow coloured parcel they received was sealed with 08 wax seals with impression of SDPO, Teliamura. On 08.03.2022 the IO alongwith PW-1, 2, 3, 6, 7, 8, 10 seized the vehicle and the contraband articles. Thereafter, PWs 3,6,7,8 and 10 put their signatures on the seizure list and the same were exhibited during trial on confirmation by the said PWs. PW-1 stated that after seizure, the seized items were taken to PS. PW 5 was in-charge of District NDPS godown in whose presence the packets were produced before the court and were again deposited to the godown. PW-8 during cross-examination stated that he has sent the samples to SFSL on 15.03.2022. PW-9 in his deposition stated that on 11.03.2022 the contraband items were withdrawn under MR No.250 and was again deposited to NDPS godown. PW-10 is the complainant of the suo-moto complaint. The defense during trial failed to discard the prosecution evidence except mere denial. The I.O. of the case prepared inventory and for correctness drawn sample and taken photographs and kept the same in godown for safe custody, thereafter, sent the sample to SFSL through SDPO, collected the report, prayed for pre-trial disposal of the contraband items and as per order of learned court arranged for disposal of the same and thereby produced the certificate of destruction. The IO has investigated the case in detail and submitted his charge-sheet which in all circumstances establishes the link from seizing to destruction, thus, no link has been found missing or doubtful in the case of the prosecution. Further, from the cross examination put to the prosecution witnesses, it has been found that the defence has not challenged the authenticity of depositing of the case property with the Malkhana to none of the witness of the prosecution, so examined. The prosecution has proved that the seized items remained safe and un-tampered from the moment of seizure until they reached the forensic laboratory. The contraband articles were seized by the police during vehicle checking. Following the seizure, the necessary formalities were observed, and the samples of the contraband were drawn, sealed, and sent to the SFSL for examination, which confirmed the substance as ganja, and the same has well been proved by the prosecution witnesses and documents relied therein. In view of all this, this Court is of the opinion that non-production of Malkhana register in the Court is in no way fatal to the prosecution case and the respondent is not entitled to have any benefit of this lacuna…….”

[14] On the contrary to the submission made regarding non-compliance of Section 57 of the NDPS Act, learned Addl. P.P. submits that non-compliance of Section 57 would not vitiate the prosecution case since substantial

compliance and mere absence of any such report cannot be said to have prejudiced the accused. In support of his submission, he has placed reliance on the judgment of the Hon'ble Supreme Court passed in ***Gurmail Chand v. State of Punjab*** reported in ***(2021) 14 SCC 334***, the relevant contents from the said judgment is quoted as under:

> "…….9. The mere fact that the witness of seizure Hari Krishan has appeared as DW1 does not led to the conclusion that the entire prosecution story has to be disbelieved. There are signatures of Hari Krishan in the seizure memo along with other police officers. The Trial Court as well as the High Court has rightly accepted the seizure, which was held to be in accordance with law. DW1 has not denied his signatures on the seizure memo rather his excuse was that it was taken on the blank paper which was rightly disbelieved by the Courts below. In so far as production of the case property, the Judicial Magistrate himself has appeared in the witness box and deposed that it was produced in the Court. The mere fact that one seal was illegible does not vitiate the proceeding.
>
> 10. In so far as submissions on the basis of Section 57 of NDPS Act are concerned, it has been held that the said provision is not to be interpreted to mean that in event the report is not sent within two days, the entire proceeding shall be vitiated. The provision has been held to be directory and to be complied with but mere not sending the report within the said period cannot have such consequence as to vitiate the entire proceeding. A three-Judge Bench of this Court in Sajan Abraham vs. State of Kerala, (2001) 6 SCC 692 has held that non-compliance of Section 57 would not vitiate the prosecution case. In paragraph 12 following was laid down: (SCC pp.696-97)
>
> > "12The last submission for the appellant is, there is non-compliance with Section 57 of the Act. He submits under it, an obligation is cast on the prosecution while making an arrest or seizure, the officer should make full report of all particulars of such arrest or seizure and send it to his immediate superior officer within 48 hours of such arrest of seizure. The submission is, this has not been done. Hence the entire case vitiates. It is true that the communication to the immediate superior has not been made in the form of a report, but we find, which is also recorded by the High Court, that PW5 has sent copies of FIR and other documents to his superior officer, which is not in dispute. Ext.P-9 shows that the copies of the FIR along with other records regarding the arrest of the appellant and seizure of

> the contraband articles were sent by PW5 to his superior officer immediately after registering the said case. So, all the necessary information to be submitted in a report was sent. This constitutes substantial compliance and mere absence of any such report cannot be said to have prejudiced the accused. This section is not mandatory in nature. When substantial compliance has been made, as in the present case, it would not vitiate the prosecution case. In the present case, we find PW 5 has sent all the relevant material to his superior officer immediately. Thus, we do not find any violation of Section 57 of the Act"……."

[15] Advancing the above submissions, learned Addl. P.P. contends that learned trial Court upon examination of all the witnesses and on perusal of the material evidence on record, has passed the order of conviction and sentence dated 12/09/2024 in case no. Special (NDPS) 30 of 2021, convicting the appellant for commission of offence punishable u/s 20(b)(ii)(c) of NDPS Act to suffer rigorous imprisonment for 10(ten years) along with a fine of Rs.1,00,000/- (one lakh) with default stipulations, the same should not be interfered by this Court. He, therefore, urges this Court to set aside the instant appeal.

[16] Heard the submissions made at the Bar. Perused the material evidence on record.

[17] To test the instant case whether the appellant is entitled to get any relief by filing the instant appeal, it is necessary to revisit some deposition of witnesses and relevant records placed before the learned trial court below.

[18] PWs No.1 & 4 are the independent witnesses in the present case. PW 1 is a driver and PW 4 is a day labour by occupation. They corroborated the

prosecution case to the extent that one truck was detained in front of CRB PS and it was searched in course of which ganja was recovered.

[19] In the instant case, PW 2, Haradhan Bose is the informant who deposed that on 06.09.2021 ASI Rajesh Bhattacharjee and other staff were performing vehicle checking duty near the Naka gate of Churaibari PS on the National Highway and in course of that detained one vehicle since it was suspected that the vehicle was carrying some illegal articles. He also deposed that the matter was immediately informed to him and he was I/C O/C at that time and he went to the Naka Point. He also deposed that before going to the Naka Point the SDPO, Dharmanagar was informed who also reached the spot and gave him authorization to search the vehicle. PW 2 also deposed that prior to searching the vehicle he along with other police personnel were searched by independent witnesses and in this respect he prepared a pre-search memo. PW2 identified the pre-search memo and his signature on it as Exhibit.5 as a whole. He also deposed that the vehicle was searched and in course of that 89 bundles of ganja were recovered. He deposed that he seized those ganja along with the vehicle, driving licence of the driver, some cash amount, one mobile phone in presence of witnesses by preparing 3 different seizure lists. PW 2 identified the 3 seizure lists and his signatures on them as Exhibit 7, 8 and 1 respectively. He also identified two personal search memos and his signatures on them as Exhibit.3 as a whole and Exhibit, 4 as a whole. He also deposed that he returned

back to the PS and lodged a suo-motu FIR regarding the incident which he identified as Exhibit. 10.

In the cross-examination, PW 2 specifically stated that the police team had detained the vehicle bearing No. PB-19M-9376 but in the second page of his FIR he had mentioned the vehicle bearing No. as PB-19M-9373 and the same was written mistakenly.

[20] PW3 Kanta Jangir was the SDPO of Dharmanagar at that time and she deposed that on 06.09.2021 she got the information from I/C, O/C of Churaibari PS that a vehicle has been detained at Naka Gate near Churaibari PS. She deposed that she had proceeded to that place and on reaching there gave authorization to SI Haradan Bose, ASI Rajesh Bhattacharjee and constable Jewel Deb of Churaibari PS to search the vehicle. PW3 identified the authorization order and her signature on it as Exhibit. 13. She deposed that authorization order was filled up by SI Haradhan Bose as per her dictation and during search 89 bundles of ganja were recovered and those ganja along with the vehicle, driving licence of both the persons, cash amount of Rs.1500/-, two mobile set and tripal were seized by SI Haradhan Bose by preparing seizure list and she signed on all the three seizure list certifying that the seizure was done in her presence. She identified her signatures on the 3 seizure lists as Exhibit. 7/1, 8/1 and 1/2 respectively. She also deposed that two persons namely Durjya Kr. Jamatia and Dalveer Singh were found inside that vehicle and both of them

were detained. She also deposed that the vehicle was a 14 wheeler truck and the registration number was PB 19M 9376. Further she deposed that SI Haradhan Bose lodged a suo motu FIR regarding such incident.

[21] The accused side while cross-examining PW6, the then Dy. Director (Chemistry Division) SFSL, Tripura before the learned trial court focused on the fact that the exhibits were received in the FSL, Narsingarh on 16.09.2021 and those were examined during the period from 22.10.2021 to 03.11.2021 but PW6 in his report did not state where the exhibits were kept during the period from 16.09.2021 till 21.10.2021, PW6 in that respect stated in his evidence that he received a sealed packet and inside it found one yellow paper envelop sealed with five wax seals duly certified by CJM of North Tripura and one Sub-Inspector and inside it he found five heat sealed transparent poly packet each containing some dried greenish-brown colour broken plant materials with fruiting flowering tops, seeds etc. The result of chemical examination as reflected in the report dated 03.11.2021 prepared by PW 6 (Exbt.14) is extracted as under:

"*The exhibits were analysed by colour test chromatographic method (TLC), macroscopic & microscopic method.*

CHEM/357/21 P5(i), P23(i), P40(i), P68(i) & P87(i) the exhibits are detected to be ganja (cannabis)."

[22] From the above discussions, it clearly indicates that the depositions of independent witnesses corroborate the statement of the official witnesses in connection with the present case which speaks that the truck was detained in front of CRB PS and the same was searched. In course of that search, ganja was recovered. The deposition of P.W. 6 shows that the samples of the recovered ganja were properly sealed and received in the office of the FSL and on examination, those were detected to be ganja. Thus, it cannot be held that there might have any manipulation or interference with the exhibits before those were sent to FSL for examination. Therefore, the prosecution case cannot be discarded solely on account of non-production of malkhana register before the trial Court when the evidence on record otherwise establishes that the seized contraband article were duly sealed and produced before the learned CJM and the samples were thereafter transmitted to the forensic laboratory with the seals intact. The evidentiary value of the omission must be assessed in the context of the entire chain of custody and the evidence relating to the identity and integrity of the seized articles. In the absence of any material indicating tampering, substitution or a break in the chain of custody, such an omission, by itself, would not necessarily warrant rejection of the prosecution case. The ultimate question is whether the prosecution has proved the identity and safe custody of the seized contraband beyond reasonable doubt.

[23] Insofar as non-compliance of Section 57 is concerned, this Court is of the view that considering the judgment passed by the Hon’ble Apex Court in

Gurmail Chand v. State of Punjab *(supra,)* such non-compliance would not vitiate the prosecution case since substantial compliance and mere absence of any such report regarding arrest and seizure by the officer to be communicated to the immediate superior official within 48 hours after such arrest and seizure, cannot be said to have prejudiced the accused. The accused has also failed to show how such non-compliance has caused prejudice and resulted in failure of justice before the learned trial Court as well as before this Court.

[24] For the reasons recorded hereinabove, this Court finds that the judgments of the Hon'ble Apex Court as referred by the learned Legal Aid Counsel on behalf of the accused are not applicable to the facts and circumstances of the present case. The evidence on record establishes that the search and seizure were conducted pursuant to the authorization issued by the SDPO in favour of the ASI concerned. The seized contraband articles were duly sealed and the same was certified by the learned Chief Judicial Magistrate, accordingly. The forensic laboratory subsequently received the sample in properly sealed condition and, upon chemical examination, confirmed the substance to be ganja. As mentioned earlier, in the cross-examination, PW 2 specifically explained that the police team had detained the vehicle bearing No. PB-19M-9376 but in the second page of his FIR he had mentioned the vehicle bearing No. as PB-19M-9373 which was written mistakenly.

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[25] In the aforesaid circumstances, the mere non-production of the malkhana register before the learned trial Court, in the absence of any material casting doubt upon the identity, integrity or safe custody of the seized contraband, cannot by itself, be a ground to discard the prosecution case. Likewise, the alleged non-compliance with Section 57 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short NDPS Act), does not, in the facts and circumstances of the present case, render the prosecution evidence unreliable or vitiate the conviction. The oral testimony of the official witnesses finds material corroboration from the independent witnesses examined during trial and no substantial infirmity has been demonstrated so as to discredit their evidence.

[26] This Court is conscious of the grave menace posed by narcotic drugs and the devastating consequences of their proliferation for society, particularly the younger generation. Such offences cannot be viewed lightly, nor can undue leniency be extended where the prosecution has established the charge beyond reasonable doubt. Accordingly, this Court finds no sufficient ground to interfere with the judgment of the conviction and order of sentence dated 12/09/2024, passed by the learned Special Judge (NDPS), North Tripura, Dharmanagar, in case no. Special (NDPS) 30 of 2021, convicting the appellant for commission of offence punishable u/s 20(b)(ii)(c) of NDPS Act to suffer rigorous imprisonment for 10(ten years) along with a fine of Rs. 1,00,000/- (one lakh) with default stipulations.

[27] The appeal is, therefore, dismissed. The judgment of conviction and order of sentence dated 12/09/2024 passed by the learned trial Curt are hereby affirmed. The appellant shall undergo the remaining period of sentence, subject to any lawful adjustment of the period already undergone and other applicable provisions of law.

[28] As a sequel, miscellaneous application(s), pending if any, shall also stand closed.

[29] Send down the LCRs alongwith a copy of this judgment.

B. PALIT, J **DR. T. AMARNATH GOUD, J**

HIGH COURT OF TRIPURA
सत्यमेव जयते

Sabyasachi G.

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