

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION

APPELLATE SIDE

**CRA (DB) 280 OF 2025
With
CRAN 2 of 2025**

**Nishikanta Hawladar & Soumen Mondal
Vs.
The State of West Bengal**

**Before: The Hon'ble Justice Arijit Banerjee
&
The Hon'ble Justice Apurba Sinha Ray**

For the Appellants : Mr. Abu Zar Ali, Adv.
For the State : Mrs. Anasuya Sinha, Ld. A.P.P.
Mr. Ranadeb Sengupta, Adv.
Mr. Karan Bapuli, Adv.

Reserved on : 05.01.2026
Judgment on : 22.01.2026

Apurba Sinha Ray, J.:-

1. The two appellants have filed this CRAN being no. 2 of 2025 praying for suspension of sentence of conviction dated 25.04.2025 passed by the Learned Judge, Special Court, NDPS Act, Nadia, Krishnanagar in NDPS case no.08 of 2023.

2. The learned Counsel appearing for the petitioner/appellants has submitted that the petitioners are languishing in the judicial custody for more than 2 years 10 Months and they have no criminal antecedents. The appellants never obstructed the proceedings and the trial was concluded in a time bound manner, that is, within one year eight months. The learned Counsel has further submitted that without considering the material on record, the present appellants were wrongly convicted. According to him provisions under Section 50 of NDPS Act were not duly complied with. No proper intimation of right to be searched before a Gazetted Officer or Magistrate was given to the appellants. The PW 3 admitted that the notice lacked endorsement or explanation. Moreover, there was violation of Standing Order No. 1 of 1/89 (Sampling/seizure). Only 1 of 80 packets was tested and no individual labelling was done and all packets were mixed up and thereby the concerned Officer violated clause 2 of the Standing Order. In this regard, learned Counsel has drawn our attention to the deposition of PW 3 at page 41 and at page 208 and also to the deposition of PW 5 at page 43 and page 211. The learned Counsel has also pointed out that arrest memos were not exhibited and proved during the trial by the complainant or the attesting witnesses. The independent witnesses attesting the arrest memos turned hostile. The learned Counsel has also submitted that the arrest was in violation of the guidelines given by the Hon'ble Apex Court in

Prabir Purkayastha vs. State (NCT of Delhi), (2024) 8 SCC 254.

3. The learned Counsel has further argued that the site plan prepared by the complainant shows wrong vehicle direction which is diametrically opposite to the testimony of PW 7. According to him, the prosecution should have examined toll receipts and the persons from the toll tax unit. It is also found that the message sent to all ICs and reply thereto contained a wrong engine number. Statements made to Police Officers cannot be used against accused. In this regard he has drawn our attention to the judicial decision of **Tofan Singh vs. State of Tamil Nadu** reported in **2021 (4) SCC 1**. The FSL report includes seeds, stalks, leaves etc. which are excluded under Section 2(iii) (b) of NDPS Act. According to him, the weight of the contraband was inflated to show commercial quantity. The learned Counsel for the appellants has relied upon the following decisions in support of his contention.

- (i) **State of Punjab vs. Balbir Singh** reported in **(1994) 3 SCC 299**
- (ii) **State of Punjab vs. Baldev Singh** reported in **(1999) 6 SCC 172**
- (iii) **State of H.P. vs. Pawan Kumar** case reported in **(2005) 4 SCC 350**,
- (iv) **Dilip and Another vs. State of M.P.** reported in **(2007) 1 SCC 450**
- (v) **Dadu @ Tulsidas vs. State of Maharashtra** reported in **(2000) 8 SCC 437**

4. The learned Counsel for the State has strongly opposed the prayer for bail on the ground that there is no infirmity in the impugned judgment and order of sentence. According to her, the contraband was recovered not from the body of the appellants but

from a secret chamber in the concerned vehicle and therefore, Section 50 of the NDPS Act has no application in this case. Moreover, search of the said vehicle was made in the presence of a Gazetted Officer. The learned Counsel for the State has also contended that the judicial decision of **State of Punjab vs. Balbir Singh** reported in **(1994) 3 SCC 299** has dealt with the principle that accused must be informed of his right to be searched before a Magistrate or a Gazetted Officer, failing which the entire recovery is vitiated. However, in the case in hand, the same was complied with.

5. In **State of Punjab vs. Baldev Singh** reported in **(1999) 6 SCC 172**, the Hon'ble Supreme Court has laid down Section 50 as mandatory when it relates to a personal search of the accused. It also deals with the issue that the accused must be informed of his right to be searched in presence of a Gazetted Officer. The same was perfectly done here according to learned State Counsel.

6. In **State of H.P. vs. Pawan Kumar** reported in **(2005) 4 SCC 350**, the issue was whether a bag is part of the person of the accused. The Hon'ble Supreme Court held that a bag carried on the shoulder is not a part of the person and it cannot be given extended meaning. In other words, Section 50 of the NDPS Act is not attracted if only the bag is searched.

7. In **Dilip and Another vs. State of M.P.** reported in **(2007)1 SCC 450**, the Hon'ble Supreme Court has laid down the law that

though Section 50 of NDPS Act might not require compliance so far as search of the scooter is concerned, but keeping in view the fact that the person of the appellants was also searched, it was obligatory to comply with the said provisions, which was not done in the said case.

8. In **State of Rajasthan vs. Paramanand**, reported in **(2014) 5 SCC 345**, the Hon'ble Supreme Court has deprecated the issue of

joint search notice. If bag and person both are searched, then Section 50 of NDPS Act applies.

9. In **Sk. Raju @ Abdul Haque @ Jagga vs. State of West Bengal**, reported in **(2018) 9 SCC 708**, the Hon'ble Supreme Court also dealt with the issue relating to ~~search~~ of bag and person of the accused. The Hon'ble Apex Court has been pleased to hold that once personal search is undertaken, Section 50 of NDPS Act is attracted, even if recovery is from the bag.

10. In **State of Punjab vs. Baljinder Singh** reported in **(2019) 10 SCC 473**, recovery was made from the vehicle and there was an

allegation of violation of Section 50 of NDPS Act. The Hon'ble Supreme Court has been pleased to hold that Section 50 of the Act does not apply when a bag or vehicle was searched without personal search.

11. In **Ranjan Kumar Chadha vs. State of HP** reported in **(2023)** **SCC Online SC 1262**, the Hon'ble Apex Court has been pleased to observe that Section 50 of the NDPS Act was inapplicable in the facts of the case in as much as only the bag was searched and not the person. Thus, although the conviction was sustained, it was nonetheless clarified that there was violation of Section 50 of the NDPS Act to the extent that a third option of being searched before the Police was given to the accused. Section 50 of NDPS Act is applicable only when personal search is undertaken and not when recovery is solely from the bag, vehicle or premises. The Supreme Court acknowledged that if both person and the bag are searched, Section 50 of NDPS Act would apply.

Court's view:-

12. After taking into consideration the submission of the Learned Counsel for the petitioners and the State and also taking into consideration the judgments cited from both sides, apparently 81.303 Kgs. of Ganja was recovered from the vehicle where the accused were on board. The search and seizure was videographed and was conducted before a Gazetted Officer. The report confirms the presence of contraband substances. Certification in terms of Section 52-A of NDPS Act was issued by the learned Judicial Magistrate. The tower location of appellant no. 1 indicates that he was coming from Odisha.

13. After going through the judgment of the learned Trial Court, it appears that the learned Trial Court has tried to deal with all the

points argued before him. He was of the opinion that as nothing was found from the persons of the appellants, provisions of Section 50 of the NDPS Act do not apply in such cases. The Learned Trial Judge has also recorded that the contraband article was recovered from a secret chamber of the concerned vehicle and the presence of the appellants at the spot was proved beyond doubt. Furthermore, learned Trial Judge has also pointed out although the independent witnesses were declared hostile, they did not deny the authentication of their signatures on the seizure lists. The learned Trial Judge has relied on several judicial decisions to point out that in this type of cases usually the independent witnesses may retract from their earlier statements for several reasons. He is also of the opinion that deposition of official witnesses cannot be disbelieved if their depositions raise confidence in the mind of the Court.

14. From the material on record it is found that 80 packets of contraband articles were recovered and only 24 grams of seized contraband was sent to forensic examination. As per the deposition of PW 3, the Raiding Officer, total quantity of seized articles were 81.303 Kgs. Other PWs also supported PW 3's deposition in this regard. However, from exhibit 23 (collectively), that is, the certificate of inventory issued by the learned Judicial Magistrate, Nadia, it appears she recorded in the report that "*the bulk seized substance is weighed in my presence by help of weighing machine/scale which was brought by the Police Personnel. The seized substance was weighed alongwith nylon sack and the weight was found to be displayed in the weighing*

scale as (A) 45.657 Kgs. (one nylon sack) and (B) 35.656 Kgs. (one nylon sack), as stated in the Seizure list.

Thereafter three packets of sample, each weighing 24 grams were drawn by Samir Ghosh, S.I. of Police, Narcotic Cell, CID, West Bengal from (A) nylon bag and three packets of sample, each weighing 24 grams were drawn by Samir Ghosh, S.I. of Police, Narcotic Cell, CID, West Bengal from (B) nylon bag.”

15. From the above it is apparent that although 80 packets of contraband were recovered during the raid, the said contraband in 80 packets were mixed up and were taken to the learned Judicial Magistrate for inventory and also for certification purposes. The Magistrate did not report that she saw 80 packets in two big nylon sacks. There is no material to show when and how the said 80 packets were mixed up and who ordered for such mixture. This goes against basic duties of the Raiding Officers/Officers making inventory to classify and make separate arrangements for seized contraband items. The Law does not allow the seizing or the Officer making inventory to mix up the seized contrabands. It appears that 80 packets of contraband articles were not produced and instead of said packets only two nylon sacks were produced and one of which contained 45.657 Kgs. and another contained 35.656 Kgs. totalling 81.313 Kgs.

16. Moreover, it appears from the evidence that the body of the appellants and thereafter the vehicle were searched. Such search was stated to be done in presence of the Gazetted Officer Avijit Biswas.

Therefore, the directions of the case law **Sk. Raju (Supra)** had been complied with. But astonishingly the said Gazetted Officer was not examined as a witness nor his presence in the spot can be ascertained from other reliable documents.

17. It is also found from the record that the Judicial Magistrate who issued the certificate under Section 52-A was not made a witness for reasons best known to the IO. It is also found from the record that the Gazetted Officer, Avijit Biswas was not produced during trial. Therefore, as the prosecution is unable to show that the said 80 packets seized by them during raid were properly classified weighed and sampled and as the said drugs appear to have been mixed up without the order of the competent authority, we find that the appellants have been able to make out an arguable case in their favour.

18. The rigors of Section 37 of NDPS Act cannot stand in the way in view of such materials on record in favour of the present appellants.

19. Hence, **CRAN 2 of 2025** is allowed.

20. The order of sentence of conviction dated 25.04.2025 passed by the Learned Judge, Special Court, NDPS Act, Nadia, Krishnanagar in NDPS case no.08 of 2023 and payment of fine shall remain suspended until further order.

21. The petitioners namely Nishikanta Hawladar and Soumen Mondal may find bail of Rs. 10,000/- each with two sureties of Rs. 5000/- each and out of which one must be local subject to the satisfaction of Chief Judicial Magistrate, Nadia at Krishnanagar and also on following conditions:-

- i) that the petitioners shall remain within the Jurisdiction of Hogalberia Police Station, Nadia and shall meet the I.C, Hogalberia Police Station once in a fortnight and shall not leave the geographical limits of District Nadia without the permission of learned Trial Court, excepting for the purpose of attending the hearing of the appeal.
- ii) They shall appear or be represented in the hearing of the appeal on each and every date and failing which the bail granted to them shall be stood cancelled without any further reference to this Court.

22. All observations made in this order are prima facie and only for the purpose of deciding the present application.

23. Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties on compliance of all necessary formalities.

I Agree.

(APURBA SINHA RAY, J.)

(ARIJIT BANERJEE, J.)