



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Appeal No. 643/1997

State

-----Appellant

Versus

Hazari Lal S/o Kazod R/o Nandakhera, PS Bhadsonda,
Chittorgarh

-----Respondent

For Appellant(s) : Mr. SR Choudhary, PP
For Respondent(s) : Ms. Jyoti Choudhary, amicus curiae

HON'BLE MR. JUSTICE FARJAND ALI

Order

Reportable-

18/04/2026

1. The instant appeal has been directed by State of Rajasthan challenging the judgment of acquittal dated 14.02.1997 passed by learned Addl. District and Sessions Judge, Nimbahera, Chittorgarh whereby after rigorous trial, the accused respondent has been acquitted from the charges under Section 8/18 of NDPS Act.
2. The prosecution story in nutshell is that upon receiving an information, the team of police station Bhadsonda proceeded to the house of the accused respondent and where certain quantity of opium was recovered for which seizure memo Exhibit P-2 was prepared. The accused respondent was apprehended from the spot and FIR exhibit P-16 came to be



lodged after usual investigation and he was charge-sheeted under Section 8/18 of NDPS Act. After conducting enquiry and framing of charges, the trial got commenced and several witnesses were produced by the prosecution and reliance was placed on certain documents to substantiate the charge. Whereafter the accused was examined under section 313 of Cr.P.C., wherein he abjured from the allegations and pleaded innocence. After hearing learned counsel for the parties, vide the impugned judgement, learned trial court acquitted him from the charges. Hence , this appeal by State of Rajasthan challenging the judgment of acquittal dated 14.02.1997.

3. I have heard learned counsel for the state. Since nobody is appearing on behalf of respondent thus, Ms. Jyoti Choudhary is appointed as amicus curiae to represent the accused and assist this court which she did aptly and duly. She appointed as Amicus Curiae under the free legal aid scheme of Rajasthan State Legal Services Authority. The remuneration to learned counsel shall be paid by RSLSA as the per the rules.
4. After minutely gone through the judgement and perusing the documents, particularly Exhibit P-2 and statement of PW-1 & PW-5, it is observed that indeed no error has been committed by the learned trial court in acquitting the accused. The charge as projected by the prosecution was that the opium was recovered from house of the accused respondent in juxtaposition. The material brought on record



revealed a distinct story. It is emanated from the record that the accused respondent was standing outside the house and recovery took place from inside the room of the house description of which is given in Exhibit P-2.

5. At this juncture, it becomes apposite to delineate, in a comprehensive juristic framework, the settled principles governing prosecutions under the **Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act)**. The said enactment is a stringent penal statute which prescribes severe punishments, often carrying rigorous imprisonment of long duration along with heavy fines. It is, therefore, a well-entrenched principle of criminal jurisprudence that the rigour of punishment under a statute proportionately elevates the standard of proof required from the prosecution. The doctrine that "*greater the offence, stricter the degree of proof*" operates with full vigour in NDPS cases. The prosecution is thus obligated to establish its case beyond all reasonable doubt, and the latitude ordinarily available in other criminal cases stands significantly constricted. Any reasonable doubt arising from the evidence must necessarily enure to the benefit of the accused.

6. It is further a cardinal principle that where the prosecution seeks to establish culpability on the basis of alleged possession of contraband, the concept of "possession" assumes pivotal importance. The expression "possession" is not to be construed in a simplistic or superficial manner;



rather, it has acquired a nuanced and layered meaning in criminal law. Jurisprudentially, possession comprises two indispensable elements: firstly, **corpus**, i.e., physical control over the substance; and secondly, **animus**, i.e., the mental element reflecting intention or knowledge. Both these constituents must co-exist. Mere physical proximity to a prohibited substance, divorced from the element of knowledge or control, would not suffice to establish possession within the meaning of the NDPS Act.

7. The law is equally well settled that possession under the NDPS Act must not only be physical but must also be **conscious and exclusive**. The requirement of *conscious possession* postulates that the accused must have knowledge of the existence of the contraband as well as its nature, coupled with some degree of control over it. It implies an awareness that the substance is present and is being kept or concealed at a particular place. In contradistinction, *exclusive possession* denotes that the contraband must be shown to be within the dominion and control of the accused alone, to the exclusion of others. Where the place of recovery is accessible to multiple persons or where the ownership or control of the premises is not conclusively established, the element of exclusivity stands diluted, thereby creating a reasonable doubt in favour of the accused.



8. In cases where the prosecution is founded upon recovery from a premise such as a dwelling house, the burden becomes even more onerous. It is incumbent upon the prosecution to adduce cogent, reliable and unimpeachable evidence demonstrating that the accused had **dominion over the premises**, and that the contraband was recovered from a place exclusively within his control and knowledge. The absence of proof regarding ownership, occupancy, or exclusive access to the premises strikes at the very root of the prosecution case. In such circumstances, the presumption of culpability cannot be drawn merely on conjectures or surmises.

9. Tested on the anvil of the aforesaid settled principles, when the evidence available on record in the present case is meticulously scrutinized, it becomes manifest that the prosecution has failed to discharge the heavy burden cast upon it. As noticed hereinabove, the accused respondent was not apprehended from within the room from which the contraband was allegedly recovered, but was rather found standing outside the house. The recovery, as per Exhibit P-2, was effected from inside a room, the ownership or exclusive possession whereof has not been established by the prosecution through any credible evidence. There is a conspicuous absence of material to indicate that the said premises belonged to the accused or that he exercised any form of dominion or control over the same.



10. In the absence of such foundational facts, the essential ingredients of **conscious and exclusive possession** remain unproved. There is nothing on record to demonstrate that the accused had knowledge of the presence of the contraband, much less that he had concealed or kept it at the place of recovery. The prosecution has thus failed to bridge the vital gap between mere suspicion and legal proof. It is trite that suspicion, however grave, cannot take the place of proof, particularly in prosecutions under a stringent statute like the NDPS Act.

11. After minutely gone through the impugned judgement, this Court see no reason to make interference in a well reasoned judgement. It is well neigh settled principle of law that an accused is always presumed innocent and their remains no force until the final conclusion of the trial. Here in this case, the presumption of innocence got fortification after going through rigorous of the trial and passing of judgement by court of competent jurisdiction. As such, the presumption has been doubled now. In such cases the Court of appeal should show reluctance in making interference. Reliance can be placed on judgement dated 12.02.2024 passed by Hon'ble the Supreme Court in case of Mallappa & Ors. Vs. State of Karnataka (Criminal Appeal No.1162/2011).



12.The appeal is devoid of merits, dismissed accordingly. The judgment of acquittal dated 14.02.1997, passed by learned trial court is affirmed.

13.The bail bonds are discharged.

14.Record be sent back forthwith.

15.This Court appreciates service rendered by amicus curiae.

(FARJAND ALI),J

28-chhavi/-