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**(2008) 01 J&K CK 0003**  
**In the Jammu And Kashmir High Court**

Hardev Singh

APPELLANT

Vs

State

RESPONDENT

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**Date of Decision :** 30-01-2008

**Acts Referred:**

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 25, 8

**Citation :** (2008) CriLJ 1878 : (2008) 2 JKJ 471

**Hon'ble Judges :** J.P. Singh, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

J.P. Singh, J.—Ninety Kilograms of Poppy Straw (Bhuki) Is stated to have been recovered from the Tool Box of Vehicle bearing

Registration No. JK02-C/5075 at Baggu Nallah, Batote when it was being driven by the petitioner from Srinagar towards Jammu. After the

investigation of the case FIR No. 74/2007 registered at Police Station, Batote, in this regard, the police produced a challan against the petitioner in

the Court of learned Special Judge (Additional Sessions Judge), Ramban.

2. Petitioner was charged u/s 8/25 of NDPS Act and his request for release on bail has been declined by learned Special Judge (Additional

Sessions Judge), Ramban. He has approached this Court for admitting him to bail.

3. Petitioner's counsel says that seizure memo dated 10-6-2007 prepared by SHO, Police Station, Batote, indicates preparation of three packets

weighing 250 grams each, out of the seized material, which are stated to have been sent for chemical analysis to Jammu and Kashmir Forensic &

Science Laboratory, Jammu, whose Assistant Scientific Officer had, however, found the three packets received by him to be weighing 300, 310

and 370 grams. It is on the basis of the increase in weight of the packets, noticed by the Assistant Scientific Officer, at the time of its receipt in the

Forensic Science Laboratory, that the learned Counsel urges the seizure of Poppy Straw to be doubtful, going to the very root of the case and

entitling the petitioner to acquittal when the case was taken up for final consideration.

4. Relying upon *Rajesh Jagdamba Avasthi Vs. State of Goa*, and *Mohd. Ramzan v. State (NCT of Delhi)* reported as 2005 (3) Crimes 311,

learned Counsel submits that the petitioner is entitled to be released on bail because there are reasonable grounds for believing that the seizure was

doubtful and the petitioner cannot be said to have been guilty of the offence with which he stands charged by the learned Special Judge.

5. Learned State counsel, on the other hand, had submitted that seizure of ninety Kilograms of Poppy Straw proves petitioner's involvement in a

heinous offence against the society which may not warrant his release on bail. According to the learned State counsel, petitioner cannot make any

capital out of the alleged discrepancy in the weight of the material of the packets, at this stage, unless the prosecution had been allowed an

opportunity to explain the reasons, at the trial of the case, because of which the discrepancy had appeared in the weight of the seized material.

6. I have considered the submissions of learned Counsel for the parties and gone through the judgments cited at the Bar.

7. Discrepancy appearing in the weight of the samples at the time of their packing by the police, and at the time of their receipt in the Laboratory,

does not, in my opinion, raise any un-rebuttable presumption, for ought we know as to what explanation would the two witnesses of the

prosecution may give explaining the discrepancy in the weight of the samples when these were packed and at the time of their receipts in the

Laboratory.

8. It may be pre-mature, at this stage, to comment upon or dwell on the validity or otherwise of the seizure effected by the police and the

explanation of the witnesses of the prosecution which they may bring in explaining the discrepancy in the weight of the samples at the time of their

preparation and at the time of their receipt in the Forensic Science Laboratory.

9. With utmost respect to his Lordship of Delhi High Court deciding *Mohd.*

Ramzan's case, I do not subscribe to the view that the discrepancy in the weight of the seized material raises an unrebuttable presumption that the seizure was doubtful. In order to dub the seizure doubtful, the Court may have to look to various aspects of the matter regarding seizure of the material and preparation of samples by the Police, such as, the measure used by the Police in weighing the seized material at the time of its seizure and at the time of the preparation of the samples, the place where the material was seized and the measure which had been employed by the Assistant Scientific Officer to weigh the packets at the time of their receipt in the Laboratory and at the time of their opening for the purpose of analysis besides other factors attending to the seizure of the material, its weighing and preparation of packets.

10. Petitioner cannot derive benefit from the judgment of Hon'ble Supreme Court of India too because in that case, the Court had been

considering the question of discrepancy in the weight of the samples at the time of their seizure and at the time of their receipt in the Laboratory,

when it had before it the evidence which the prosecution had led to prove the seizure of material and samples etc. In view of the material placed on

records by the prosecution, Hon'ble Supreme Court of India had come to the conclusion that the seizure in that case was doubtful.

11. The credibility of the recovery proceedings in the present case, cannot thus be considered at this pre-mature stage for recording a finding that

the recovery of seized material by the police was doubtful because such an exercise may be permissible only when the prosecution had been

allowed opportunity to lead its evidence to prove the seizure and explain the discrepancy appearing in the weight of the samples as noticed by the

Assistant Scientific Officer of Forensic Science Laboratory.

12. Discrepancy in the weight at the time of preparation of the samples and at the time of their receipt in the Laboratory, by itself, would not furnish

any justifiable basis for recording a finding that the discrepancy in weight of the samples renders the recovery itself doubtful and resultantly a finding

that the petitioner may not be guilty of the offence with which he stands charged.

13. There is thus no material on records on the basis whereof, a finding may be recorded that there are reasonable grounds for believing that the

petitioner is not guilty of the offences with which he stands charged and that he

is not Likely to commit any offence while on bail.

14. I, therefore, do not find any merit in this application which is accordingly dismissed.

15. The judgment is announced by me in terms of Rule 138(3) of the Jammu and Kashmir High Court, Rules, 1999.