

**IN THE COURT OF ADDITIONAL DISTRICT & SESSIONS JUDGE
FIRST COURT , TAMLUK, PURBA MEDINIPUR-CUM-JUDGE,
SPECIAL COURT UNDER NDPS, ACT.**

**Present :- Shri Bhaskar Bhattacharjee,
Judge, Special Court under NDPS Act,
Purba Medinipur at Tamluk.**

T.R (NDPS) No. 3 of 2011

**[Arising out of Bhabanipur P.S Case No. 96/11, dated- 11.05. 11,
U/s 20(b)(ii)(B) of the NDPS Act]**

State of West Bengal

-Vrs-

Sk. Raju @ Nepali Raju.

.....Accused Person.

For the State :- Mr. Badru Alam Mallick , Ld. P.P. in-charge.

For the Accused :- Mr Subash Ghosh, Ld Advocate for the accused.

Charge U/s 20(b)(ii)(B) of the NDPS Act

Date of delivery of Judgment : Monday, the 30th day of March, 2015

J U D G M E N T

This is a case under Sections 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as the 'N.D.P.S. Act' for short) against the above named accused person.

This prosecution case has been originated on the basis of the Written Complaint lodged by the de facto complainant, SI –Sanjay Srivastava, Officer in-charge of Bhabanipur P.S.

The gist of the prosecution case, in short is that that on 10.05.11 at about 18.25 hrs. de facto complainant SI –Sanjay Srivastava received a secret source information that the accused, carrying some amount of ' charas' in his possession may arrive at City Centre Crossing, Haldia during night hours for the purpose of selling the same and he immediately informed the matter to his superior Officers over telephone and obtained their permission for conducting raid. He diarized the source information. Thereafter, CI Mahishadal, Inspector Nikhil Kr. Basu, a Gazetted Officer was informed to accompany them during raid programme and he gladly accepted the proposal. The raiding party was informed. The raiding party was headed by C.I Mohisadal, Inspector Nikhil Kr. Basu. The raiding party equipped with necessary articles reached near City Center Bus Stand at about 21:55 hrs. Two independent local witnesses namely Sk. Sahid and Dipankar Kamilya were called to accompany the raiding party. Their consent was obtained. At about 23:35 hrs they saw the accused persons being identified by source, approaching from

contd.....2

Eastern side, carrying a yellow plastic in his right hand and when the accused person arrived at City Centre Crossing he was surrounded by the members of the raiding party. Enquiry was made with the accused person in the presence of the independent witnesses and the accused person disclosed his identity as S.K Raju @ Nepali Raju.

It is the further case of the prosecution is that the de facto complainant S.I Sanjoy Srivastava informed about the provisions of Section 50 of the NDPS Act. The accused was told that under section 50(1) of the NDPS Act he has a right to get himself searched in the presence of an Executive Magistrate or a Gazetted Officer for conducting search of his person. Written notice was issued accordingly. The accused person was again informed of being searched in presence of a Gazetted Officer present on the spot or in presence of an Executive Magistrate. The accused person gave his consent and S.I Sanjoy Srivastava searched his person in presence of CI, Mohisadal and recovered one yellow packet containing 'Charas'. The accused also confessed during interrogation that the substance which he was carrying was "Charas". The weight of the 'Charas' was taken and found to be 500gram. Necessary procedure of drawing samples and sealing was followed. The accused failed to produce any valid document in support of the possession of such huge 'Charas' and for which he was arrested.

On the strength of the said written complaint, lodged by the defacto complainant, SI- Sanjay Srivastav, himself as the O.C of Bhabanipur P.S started **Bhabanipur P.S Case No. 96/11, dated- 11.05.11, U/s 20(b)(ii)(B) of the NDPS Act** against the accused person.

After completion of investigation I.O- S.I Tapas Kr. Das submitted charge u/sec. 20(b)(ii)(B) of the NDPS Act against the accused namely, Sk. Raju @ Nepali Raju before this court on 11.07.11.

Record reveals that charge against the accused person, namely, Sk. Raju @ Nepali Raju was framed on 14.12.11 u/sec. 20(b)(ii)(B) of the NDPS Act. The content of the charge was read over and explained to the accused person in Bengali to which he pleaded not guilty and claimed to be tried. Accordingly trial started thereby.

During course of trial prosecution has examined as many as 7 witnesses namely, S.I Sanjoy Srivastav, ASI Naru Gopal Mondal, Constable Gobinda Jana, Sk. Sahid, Dipankar Kamilya, Swapan Goswami, Tapas Kr. Das as PWs 1 to 7, respectively.

The following documents have been marked as Exhibits by the side of the prosecution, namely, seizure list (Exbt. 1), written FIR (Exbt. 2), signatures of PW 1

on written complaint (Exbt. 2/1 and 2/2 respectively), signature of Sk. Sahid on seizure list (Exbt. 1/ 1), signature of PW 5 on the seizure list (Exbt. 1/ 2), carbon copy of hand sketch map with index (Exbt. 3 and 3/1 respectively), Formal FIR in connection with Bhabanipur P.S case no. 96/11 dt. 10.05.11 (Exbt. 4) and report of State Drugs Control, Govt. of West Bengal dt. 06.07.11 (Exbt. 5).

The following articles have been marked as Mat Exhibits by the side of the prosecution, namely, seven lumps of 'charas' (Mat Exbt. I), two lumps of 'charas' (Mat Exbt. I/A), yellow polythene paper (Mat Exbt. II), cash of Rs.160/- (three currency notes)(Mat Exbt. III collectively) and four Labels (Mat Exbt. IV collectively).

After completion of the Prosecution case the accused person was examined U/s 313 Cr.P.C referring to the incriminating statements recorded by this Court and he again pleaded to the charge of the offence labeled against him as false and fabricated and reiterated his plea of innocence. There is no defence witness in this case.

Points for consideration

1. Did the accused person possessed 500 gm of 'charas' violating the provision as laid down in Section 8 of the NDPS Act?
2. Is the accused person guilty to the charge punishable under Section 20(b)(ii)(B) of the N.D.P.S. Act ?

Decision with reasons

Point Nos. 1 & 2 :

Both the points being inter-related, they are taken up together for discussion for the sake of convenience.

To substantiate the charge, the prosecution has examined 7 witnesses in this case.

From the evidence of P.W 1 SI Sanjoy Sribastav it appears that on 10.05.11 he was posted at Bhawanipur P.S to the post of the OC. He has stated that on that date at around 6.30 p.m he received a secret information from a source that a miscreant might turn up at City Centre Crossing, Haldia under P.S Bhawanipur with narcotic substances and after receipt of the said information he reported the matter to the CI- Haldia and Addl. S.P Haldia and as per their advice he made contact with BDO- Haldia for the purpose of conducting raid. He further stated that due to inability of the BDO – Haldia he requested Inspector Nikhil Bose, CI – Mahishadal to accompany him to the spot for the purpose of conducting raid, search and seizure.

It is his further evidence that at 9.30 p.m he proceeded towards the spot with force and at around 11.30 p.m/ 12.00 mid-night they noticed one person coming towards the City Centre Crossing and their source identified the said person. He further stated that they surrounded the accused and the accused were carrying a yellow coloured polythene packet in his hand and they disclosed their willingness to search the accused and also asked him whether he is willing to get himself searched by this witness in presence of CI- Mahishadal, a Gazetted Officer and the accused gave his consent. They served two notices to the accused in writing.

P.W 1 SI Sanjoy Sribastav further deposed that in presence of Inspector Nikhil Bose, he searched the accused and during search nine brown coloured lumps of different size were recovered from a black polythene packet kept within the said yellow packet and a peculiar smell was coming out from the said lumps and during interrogation the accused confessed that those lumps were 'charas' and they took weight of those lumps and the total weight was 500 gms and he collected two lumps weighing about 100 gms as sample and packet and labeled the same for the purpose of chemical examination. He further stated that remaining seven lumps were packed separately and label was pasted on it and a cash of Rs. 160/- was recovered from the possession of the accused which was also seized. He further stated that he prepared a seizure list in presence of witnesses and the accused also put his signature on the same and a copy of the seizure list was served upon the accused. He proved the seizure list (Exbt. 1) during trial. He identified the accused during trial.

P.W 1 SI Sanjoy Sribastav further deposed that out of those seven lumps of 'charas' seized by him two were found broken into pieces. He identified the seven lumps (Mat Exbt. I) , the two lumps which were sent for chemical analysis [Mat Exbt.I(A)], the yellow polythene packet (Mat Exbt. II), the seized money (Mat Exbt. III) and the labels (Mat Exbt. IV). He further stated that he lodged a written complaint before the PS which he proved during trial (Exbt. 2). This witness identified the accused during trial.

During his cross examination this witness stated, inter alia, that he did not take any initiative to bring any councilor or respectable person for the purpose of conducting raid in their presence. He further stated that the wrapping paper does not bear any case No. or any signature of him.

It is his further evidence that on the relevant date, CI – Mahishadal accompanied him to the spot for conducting raid, search and seizure. Apart from seizure list he did not make any inventory list in respect of the seized material. He

further stated that he did not inform anything to the accused in writing as to the ground of his arrest. The seizure list does not contain signature of any constable or ASI who took part in the raid.

He further stated that on the relevant date Inspector Nikhil Kr. Bose came to Bhabanipur P.S. He denied the suggestions put to him by the Ld. Defence Lawyer.

PW 2 ASI Naru Gopal Mondal stated in his evidence that on 10.05.11 he was posted at Bhabanipur P.S to the post of an ASI of Police and on that date SI Sanjay Srivantava- the then O.C of Bhabanipur P.S received a secret information and at around 10.00 p.m Sri Sanjay Srivantava and this witness left for City Centre, Haldia with force . This witness also deposed that at around 11.00 p.m Inspector Nikhil Bose reached the spot and at around 11.30 p.m they noticed the accused walking along the road with a polythene packet containing something and that the said bag was weighted at the spot and after search they detected ' Charas' weighing 500 gm. inside the said polythene bag. This witness also deposed that the said 'charas' was sealed, labeled and packed at the spot and that sample of 100 gm was derived from the said 'charas'. This witness identified the accused during trial.

During the course of cross examination this witness stated, inter alia, that he put his signature on the seizure list as witness at the p.o along with constable Dipen Bhowmick and constable Sahi Narayan Singh. This witness denied the suggestions put to him by the Ld. Defence Lawyer.

PW 3 Constable Gobinda Jana deposed that on 10.05.11 he was posted at Bhabanipur P.S in the same capacity and on that date at night he accompanied O.C Bhabanipur with force at City Centre and they intercepted the accused as per instruction of SI Sanjay Srivantava. This witness also deposed that a yellow packet containing 'charas' was recovered from the possession of the accused. He also deposed that the weight of the seized 'charas' was taken at the spot and documents were prepared there. This witness identified the accused during trial.

During the course of cross examination this witness stated, inter alia, that some documents were prepared at the P.S and some were prepared on the spot relating to the said raid. This witness denied the suggestions put to him by the Ld. Defence Lawyer.

PW 4 Sk. Rustam is an independent witness who was declared hostile by the prosecution as he resiled from his previous statement. He stated that he and Dipankar Kamilya (PW 5) put their signatures on a blank paper at Bhawanipur P.S.

PW 5 Dipankar Kamilya is an independent witness who was declared hostile by the prosecution as he resiled from his previous statement. He stated that he signed on a paper at the P.S.

PW 6 S.I Swapan Goswami the 1st I.O of this case stated in his evidence that on 10.05.11 he was posted at Bhawanipur P.S to the post of a PSI and on that date O.C- Bhawanipur P.S lodged a written complaint before the P.S after causing a raid and started Bhawanipur P.S case No. 96/11 dt. 11.05.11 u/sec. 20(b)(ii)(B) of the NDPS Act against the accused and he endorsed the case to this witness for investigation. PW 6 S.I Swapan Goswami, also deposed that during the course of investigation he examined the witnesses, drew rough sketch map with index, forwarded the accused persons before the Ld. Court, took steps to send the seized sample for forensic examination before the FSL department. This witness proved the rough sketch map with index (Exbt. 3 and 3/1 respectively), identified the lumps of 'charas' (Mat Exbt. I & I/A) which was seized from the possession of the accused. This witness also identified the accused during trial.

During the course of cross examination this witness stated, inter alia, that at the time when he was investigating the case he was at the rank of probationary S.I and he did not receive any special power by way of notification from the State Government to further investigate the case in connection with Section 53(2) of the NDPS Act. He also deposed that he did not prepare an inventory of such narcotic drugs or psychotropic substances containing such detail relating to their description, quality, mode of packing, marks, particulars or such other identifying particulars of the narcotic drug or psychotropic substances or the packet in which they were packed, origin of the country and other particulars in accordance with Section 52A(2) of the NDPS Act. This witness denied the suggestions put to him by the Ld. Defence Lawyer.

PW 7 S.I Tapas Kr. Das the 2nd I.O of this case deposed that on 19.06.11 he was posted at Bhawanipur P.S in the same capacity and on that date he was entrusted to further investigate Bhawanipur P.S case No. 96/11 dt. 11.05.11 u/sec. 20(b)(ii)(B) of the NDPS Act against the accused. This witness also deposed that during investigation he collected the FSL report in respect of the seized sample and after completion of investigation he submitted charge sheet against the accused u/sec. 20(b)(ii)(B) of the NDPS Act. This witness proved the report dt. 06.07.11 (Exbt. 5) issued by the State Drug Control and Research Laboratory, Govt. of West Bengal, Kolkata.

During the course of cross examination this witness stated, inter alia, that at the time of investigation he was not holding the post of O.C of that P.S and he also did not receive any special power by way of notification from the State Government to further investigate the case in connection with Section 53(2) of the NDPS Act.

These are sum and the substance of evidence of prosecution.

During the course of argument, Id. Panel Prosecution-in -charge has contended that the prosecution has been able to establish its case on the basis of the evidence adduced by PW1, PW-2, PW3, PW6 and PW-7 that “charas” weighing about 500gms was recovered from the possession of the accused kept inside a bag and that the accused possessed the said “charas” illegally. He further submitted that the report of chemical analysis of the sample (i.e. Ext.5) collected from the seized materials has strengthened the oral evidence adduced by the police personnel. It is the contention of the Id. PP-in-charge that all the prosecution witnesses are reliable and the evidence adduced by them is cogent and consistent. He has emphatically submitted that accused may be convicted to the charge framed against him on the basis of the prosecution evidence garnered on record.

On the other hand, Ld. Defence Lawyer contended that prosecution has failed to prove the charge against the accused facing the trial both on the aspect of fact and also on law.

Mr. Subhash Ghosh, Learned Advocate appearing on behalf of the accused person submitted that in the present case it has been alleged that the recovery of “charas” has been made from a bag which were in the possession of the accused together with Rs.160/- which was kept inside the pocket of the accused as per seizure list and as such the strict compliance of section 50 of the NDPS Act is required to be followed, in view of the observations of the three-Judges Bench of the Hon'ble Apex Court of India reported in (2014)2 C. Cr.L.R (SC) 319 (State of Rajasthan Vs Parmanand @ Anr) and according to him the prosecution has failed to comply the said provision as the accused was not searched in the presence of an independent Officer and was not taken to the nearest Magistrate or the nearest Gazetted Officer for search. According to the Ld. Defence Lawyer as per evidence of PW 1 SI – Sanjay Sribastav, the de facto complainant of the case it will be evident that the mandatory provisions u/ss Sec.-52A(2), sec.52 and sec.-57 of the Narcotic Drugs and Psychotropic Substances Act, 1985(NDPS Act) have been complied with in this case and due to non-compliance of these mandatory provisions the prosecution has no leg to stand upon and has prayed acquittal of the accused person on that score only.

Ld. Defence Lawyer further contended that apart from non-compliance of the statutory provisions of the Act in this case there are several discrepancies in the evidence of the prosecution witnesses on the points, namely, the independent public witnesses did not support the prosecution case, no explanation about the

whereabouts of the alleged sample 'charas' for the period from 11.05.11 to 18.05.11 for which the chance of tampering with the sample cannot be overruled and discrepancies between the evidence of PW 1 and PW 2 regarding signing on the seizure list as witness at the PO after alleged search and seizure which strikes at the very root of the case and pave the way of acquittal of the accused person from this case and relied upon the decisions of the Hon'ble Apex Court of India report in **2011 (3) Supreme Court cases (Cri) 407 and 2011 (2) Supreme Court cases (Cri) 547.**

To sum up his submission, he prayed for acquittal of the accused person.

Now, let me consider these two rival contentions with reference to the evidence garnered on record on behalf of the prosecution.

At the very outset, on going through the copy of the test or analysis report (Exhibit 5) it reveals that the sample of the seized contraband substance which was sent for chemical test contained 'Charas'. Therefore, it is prima facie established that the seized substance contained 'Charas'. So, this point is set at rest.

Now it is to be determined whether the accused was in conscious possession of the contraband substances namely 'Charas' or not.

Having heard Learned Advocate of both the sides, let me now decide the aforesaid aspect in the light of the evidence on record.

It is the case of the prosecution that 'Charas' measuring 500 gm was recovered from the possession of the accused person which was kept inside a yellow coloured polythene packet at City Centre Crossing, Haldia where the accused was found coming for selling the same on 11.05.11. The accused failed to produce any valid document in support of possession of such contraband article. Before delving into the intricate discussion in this aspect I would like to mention herein that since 'Charas' was not recovered from any building, conveyance or enclosed place therefore, the provisions embodied under Section 42 of the NDPS Act is not applicable in this case.

In a case like a present one where the body of a human being was searched the provision of Section 50 of the NDPS Act came into play. It is evident from the seizure list (Exbt. 1) coupled with the oral evidence of the PW 1 SI Sanjoy Sribastav that Rs. 160/- was recovered from the book pocket of the accused during the course of search.

In view of the observations of the Hon'ble three judges' Bench of the Hon'ble Supreme Court of India in a decision reported in 2005 Supreme Court Cases (Cri) 943(State of H.P VS Pawan Kumar), that a 'person' would mean a human being with

with appropriate coverings and clothing and also footwear. Therefore, there appears no impediment to hold that the procedure as laid down in Section 50 of the NDPS Act should be followed during search in the present case.

Now from scanning the oral and documentary evidence on record it appears that a written notice u/sec. 50 of the NDPS Act was issued to the accused person prior to search. The said written notice u/sec. 50 of the NDPS Act was not produced or proved during trial. As stated by the Constitution Bench of the Hon'ble Apex Court in *State of Punjab Vs Baldeb Singh* [(1999) 6 SCC 172], it is not necessary to inform the accused person, in writing, of his right under Section 50/1 of the NDPS Act. His right can be orally communicated to him.

Now the question is whether the oral communication made by the de facto complainant cum Seizing Officer – PW 1 was in accordance with the provision of Section 50 of the NDPS Act or not.

PW 1 SI Sanjoy Sribastav in no uncertain term has stated that he asked the accused person whether he wanted to get searched by him and the accused person expressed his unwillingness.

PW 1 SI Sanjoy Sribastav further stated to the accused person that whether he was willing to get himself searched by him in presence of CI Mahishadal, a Gazetted Officer, who accompanied him during raid, and thereafter, the accused person gave his consent and he (PW 1) conducted search of the person of the accused and recovered nine coloured lumps of different size.

It is astonishing to note that the accused was not made aware of his statutory right to be searched in the presence of a nearest Magistrate also u/sec. 50(1) NDPS Act by PW 1. Communication of the said right to the accused person who is about to be searched is not an empty formality. It has a purpose. Most of the offences under the NDPS Act carry stringent punishment and therefore, the prescribed procedure has to be meticulously followed. In much considered opinion it is a breach of Section 50(1) of the NDPS Act.

The idea behind taking an accused to the nearest Magistrate or the nearest Gazetted Officer, if he so requires, is to give him a chance of being searched in the presence of an independent Officer. In this case C.I Mahishadal, Inspector Nikhil Bose was a member of raiding party and cannot be called an independent Officer [**Relied on the observation of the Hon'ble Supreme Court of India reported in (2014)2 C.Cr.L.R (SC) 319 (State of Rajasthan Vs Parmanand & Anr)**].

Therefore, in view of my foregoing discussion, I have no hesitation to hold that non-completion of the mandatory provision of Section 50(1) of the NDPS Act has given a decent burial to the prosecution case. [Relied on the observations of the

constitutional Bench of the Hon'ble Apex Court (2011) 1 Supreme Court Cases (Cri) 497 – (Vijaysinh Chanubha Jadeja Vs State of Gujrat)].

Now it is to be seen whether the case of the prosecution case can sustain for non compliance of the provision of Sections 52A(2), 52 and 57 of the NDPS Act or not. Learned Advocate appearing on behalf of the accused person submitted that there are also non compliance of provisions of Sections 52A(2), 52 and Section 57 of the NDPS Act and as such it further raises doubt in the prosecution case, the benefit of which should go in favour of the accused person facing the trial.

At first I look to the relevant provisions embodied under section **57 of the NDPS Act** which is enumerated hereunder:

"Report of arrest and seizure Whenever any person makes any arrest or seizure under this Act, he shall, within forty eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior."

On bare reading of the aforesaid provisions it is quite clear that the arresting or seizing officer has to make a full report of all the particulars of such arrest or seizure to his immediate superior officer within forty eight hours next after such arrest and seizure.

The object behind this provision can well be seen that every seizure and arrest made under this act is required to be submitted to the immediate official superior which signifies the intention and anxiety of the legislation in providing for checks at various stages of investigation. This safeguard undoubtedly have their own value and they are certainly not intended to be flouted. In **Gurbax Singh vs State of Haryana reported in 2001 Cr.LJ 1166.**, the Hon'ble Apex court has held that the provisions under Section 57 are directory and that the violation of this provision would not ipso facto violate the trial or conviction. However, the I.O can not totally ignore this provision and such failure will have a bearing on appreciation of evidence regarding arrest of the accused and seizure of the articles. The Hon'ble Apex court in the decision of **State of Punjab vs Balbir Singh reported in AIR 1994 SC 1872** has held that the officers cannot ignore the provisions under section 57 of the NDPS Act and if there is no proper explanation for noncompliance of the same or where the officers totally ignored the provisions then that will have an adverse effect on the prosecution case. Therefore, on combined reading of both the aforementioned decisions of the Hon'ble Apex Court it is quite clear that though the provisions of section 57 of the NDPS Act is not mandatory yet its noncompliance without explanation can cause an adverse effect on the prosecution case and the I.O

cannot totally ignore the said provisions. Keeping in mind the aforesaid principles of law let me now revert back to the materials on record to decide as to whether the arresting and seizing officer complied such provisions under section 57 of the NDPS Act or not.

At the very outset on going through the materials on record I find that there is no iota of evidence from the side of the prosecution in support of the fact that the arresting and seizing officer PW 1 SI Sanjay Sribastav, made full report of all the particulars of arrest and seizure to his immediate superior within 48 hours next after such arrest and seizure. Rather from the cross-examination of the PW-1 it is evident that he in no uncertain term has stated that he has not complied with the provision of Section 57 of the Act. Therefore, in view of the above I am to hold that the arresting and seizing officer not only failed to comply the provisions embodied under section 57 of the NDPS Act but has totally ignored the said provisions. During the trial the prosecution did not provide any explanation for such noncompliance of the provisions of section 57 of the Act. Well keeping in mind the above findings of the Hon'ble Apex Court I am to hold that such noncompliance of section 57 of the Act without explanation causes an adverse effect on the prosecution and non compliance of Section 57 of the N.D.P.S Act raises serious doubt in the prosecution case.

Now let me find out whether the provisions of section 52 has been complied with or not.

Ld. Lawyer for the defence invited my critical attention that strict compliance of the Mandatory provision of the section 52 of the NDPS Act has not been complied with in the present case as it will be evident from the evidence of the de facto complainant PW 1 SI Sanjay Sribastav and urged that the accused should be acquitted on this ground only.

Section 52 of the NDPS Act casts a duty on the arresting officer to inform the suspect of the grounds of such arrest. If a person is not informed of the grounds of his arrest, his further determination may become invalid or unlawful. It has been held in a decision reported in **1995 CRILJ 2074** relying upon the observations of the **Balbir Singh's** case that the provisions of section 52 is mandatory in character. It is the statutory right of the accused and the seizing officer, namely, PW 1 SI Sanjay Sribastav has categorically admitted that he did not inform the ground of arrest to the accused. This non-compliance of the provision goes against the prosecution and prosecution has failed to show why the mandatory requirement has not been adhered to .

Now if we discuss the factual aspect of this case will find that there are several lacunas in the prosecution case.

Last but not the least it appears that the Narcotics Substance was seized on 11.05.11 and the sample of the same was received by the State Drugs Control and Research Laboratory, Kolkata on 19.05.11 as it is evident from Ext. 5. The sample ought to have been sent on the next date or within a short date. There is no evidence on record to establish that in whose possession the sample had remained from 11.05.11 to 19.05.11 being a billion dollar question, which remains unanswered. There is no evidence on record that the sample was kept in the Malkhana of the PS. We must emphasize that in a prosecution relating to the Act the question as to how and where the samples had been stored or as to when they had been dispatched or received in the laboratory is a matter of great importance on account of the huge penalty involved in these matters. There is a high chance of tampering of the sample and the sanctity of the sample might have been compromised which casts a doubt on the prosecution story. That being the position it will be very risky to rely on the test or analysis report.

That apart the independent witnesses, namely, PW-4 and PW-5 did not support the factum of search and seizure. In such a situation it will be very risky to bank upon the story of the prosecution case, particularly in cases relating to NDPS case. **[Relied 2011 2 Supreme Court Cases (Cri) 547].**

With all these loops ends in prosecution evidence looming large and remaining unplugged, the prosecution cannot succeed.

The object of the NDPS Act is to make stringent provisions for control and regulation of operation relating to those drugs and substances. At the same time to avoid harm to the innocent persons and to avoid abuse of the provisions by the officer, certain safeguard are provided which in the context have to be observed strictly. Therefore, as the provisions of sections 50, 52, 57 of the NDPS Act have not been observed in accordance with law as per requirement and at the same time the fact of search, recovery and seizure of ' Charas' from the possession of accused person not being proved by cogent evidence, I am to hold that the prosecution has failed to establish recovery of the ' Charas' from the possession of the accused person beyond that shadow of reasonable doubt and hence the accused person is liable to be acquitted.

When all the factors as discussed above are considered together, hollowness and lack of credibility of prosecution story start ringing very loudly and powerfully. In such circumstances, I am compelled to hold that the prosecution has failed to prove beyond doubt that the accused person possessed 500 gms of 'Charas' in violation of the provision of Section 8 of the N.D.P.S. Act and the said quantum of 'Charas' was recovered from the possession of the accused person at City Centre Crossing, Haldia on 11.05.11.

In the light of my whole discussion, I am compelled to hold that the accused shall not be held guilty to the charge U/s. 20(b)(ii)(B) of the N.D.P.S. Act on the basis of the prosecution evidence garnered on record.

The points and the determination are answer in the negative.

In the result, prosecution case fails and the accused person merits acquittal.

Hence,

o r d e r e d

that the **accused person namely, Sk. Raju @ Nepali Raju** is found not guilty to the **charge u/section 20(b)(ii)(B) of the N.D.P.S. Act** and he is **acquitted U/s. 235(1) of the Cr.P.C.**

Let the above named accused person be released at once, if not wanted in any other case and be set at liberty.

Seized alamats, 'Charas' (Marked as Mat Ext. I and I/A), be confiscated to the State after expiry of the period of appeal **and the same be destroyed after expiry of the statutory period of filing appeal in presence of Additional District Magistrate (General), Tamluk, Purba Medinipur and report to that effect must be furnished before the court without fail.**

Seized currency notes of Rs. 160/- (one hundred sixty) [Mat Exbt. III (collectively)] be confiscated to the State after expiry of the statutory period of appeal. Other materials Exhibits [Exbt. II and IV (collectively)], namely, yellow polythene packet and four labels be destroyed after expiry of the statutory period of appeal.

Let the relevant portion of copy of this judgment be sent to Court Inspector,
Sadar Court, Tamluk, Purba Medinipur for information and necessary compliance.

(BHASHKAR BHATTACHARJEE)

Dic. & corr. By me,

Judge,
Special Court under NDPS Act,
Purba Medinipur at Tamluk.

Judge,
Special Court under NDPS Act,
Purba Medinipur at Tamluk.