

GAHC010008552011



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CrI.A./170/2011

AMAR ROY
S/O LATE NIRESH ROY, R/O PUKHURIPAR, ATHGAON UNDER
BHARALUMUKH POLICE STATION IN THE DIST. OF KAMRUP, ASSAM.

VERSUS

STATE OF ASSAM
REPRESENTED BY PP, ASSAM.

Advocate for the Petitioner : MR. S K JAIN

Advocate for the Respondent :

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

JUDGEMENT AND ORDER (CAV)

Date : 27-01-2023

Heard Mr. D. Gogoi, learned counsel for the accused-appellant. Also heard Mr. P.S. Lahkar, learned Additional Public Prosecutor for the State/respondent.

2. This is an appeal filed under Section 374(2) Cr.P.C. 1973, challenging the judgment and order of conviction passed by the Id. Sessions Judge(Spl.), Kamrup in Sessions(Spl.) Case No.

371(K-G)/2009 under Sections 20(b)(ii) (C) of NDPS Act, whereby the accused/appellant was sentenced to undergo rigorous imprisonment for 10(ten) years and to pay a fine of Rs.1,00,000/- in default, further imprisonment for 6(six) months.

3. The fact what emerges from the FIR is that on 29.11.2009 at around 11:20 a.m. the Officer-in-charge of Bharalumukh police station received a secret information that in the godown of accused/appellant Amar Roy some contraband ganja and explosive substances were kept situated at Fatasil ASEB colony. The information was entered in General Diary vide Bharalumukh P.S. G.D. Entry No. 1410 dated 29.11.2009. Thereafter, the Deputy Superintendent of Police, Pandu Division, authorized the S.I. Fakaruddin Barbhuyan to investigate the case. Accordingly, S.I. Fakaruddin Barbhuyan along with staff of Bharalumukh police station visited the godown of the accused/appellant Amar Roy at Fatasil ASEB colony. On being searched, 270 nos. of packets wrapped with colourful gift papers and some explosives were also recovered in the said godown. About 170 kg of ganja were seized in presence of the witnesses. The sample of the ganja were drawn, packed and sealed in presence of the witnesses. Subsequently, the samples were sent to the FSL for chemical examination. On the basis of the report from FSL, Guwahati, it was found that the samples gave positive test for Cannabis (ganja). Thereafter, the accused Amar Roy and Gopal Singh were arrested. Subsequently, after completion of investigation, charge-sheet was submitted against both the accused persons under Section 20(b)(ii)(C) of NDPS Act.

4. Both the accused persons, Amar Roy and Gopal Singh put their appearance before the Id. Special Judge, Kamrup. On their appearance charge was framed under Section 20(b)(ii)(C) of NDPS Act, which was read over and explained to the accused to which they pleaded not guilty.

5. In order to prove the guilt of the accused persons, the prosecution has examined 8(eight) witnesses and exhibited some documents as well as marked material objects. On completion of trial, the statements of both the accused were recorded under section 313 Cr.P.C and the incriminating materials found in the statements of the witnesses were put

before them to which they denied all the allegations. The accused/appellant Amar Roy denied that the godwon where from ganja was seized belongs to him. The defence has examined 2(two) witnesses. After hearing learned counsel for the both sides, accused Amar Roy was convicted as aforesaid and Gopal Singh was acquitted by the Id. trial court.

6. The learned counsel for the accused/appellant has argued that the evidence relied upon by the prosecution has not conclusively proved the guilt of the accused/appellant as the perpetrator of the alleged crime and as such, the impugned judgment and order dated 01.09.2011 convicting the accused/appellant is liable to be set aside.

7. It is also submitted that Sub-section (1) of Section 42 of the NDPS Act, the officer conducting the search is under legal obligation to record the reasons or grounds of his belief to make the search in terms of power, conferred upon him but in the instant case, P.W.2, the police officer conducting the search had not recorded the reasons or grounds for his belief as required under this provision and as there is a clear violation of the mandatory provisions of the Act and as such, the impugned judgment and order is liable to be set aside.

8. It is also submission of the learned counsel for the accused/appellant that the provisions of Section 42(1) and 42(2) of the NDPS Act, being mandatory, non-compliance thereof would affect the prosecution and consequently vitiate the trial. According to learned counsel for the appellant, the evidence of P.W.1, the Senior Scientific Officer, FSL, does not indicate that the sample, which was received in the laboratory, seals were intact and tallied with the sample impression of the seal and as such, the report submitted by P.W. 1 is not admissible in law.

9. On the other hand, learned Additional Public Prosecutor has vehemently opposed to the prayer of the appellant and submitted that the Section 42 of NDPS Act has been complied with. Immediately, after receipt of the information regarding storing of contraband article in the garage-cum-godown of accused/appellant, a GD entry was recorded vide GD Entry No. 1410 dated 29.11.2009 vide exhibit No. 3, wherein it is clearly reflected that on receipt of secret information that in the godown of appellant Amar Roy, some contraband ganja and

explosive substances were kept situated at Fatasil ASEB colony. Then, the Deputy Superintendent of Police, Pandu Division issued authority letter asking P.W.2 to investigate the same and said authority slip was also exhibited in the case as such, there was no violation of Section 42 of NDPS Act. The Id. trial court has rightly convicted the accused/appellant which does not require any interference by this Court.

10. I have considered the submissions of learned counsel for the parties and I have also perused the record of Sessions(Spl.) Case No. 371(K-G)/2009 as well as the relevant documents available in the record.

11. P.W.2 is Fakaruddin Barbhuyan, SI of police of Bharalumukhh police station, who deposed in his evidence that on 29.11.2009, he was working as second officer at Bharalumukh police station. On that day at about 11:20 a.m., on getting information from secret source by the officer-in-charge of the police station about possessing contraband articles by the accused Amar Roy inside his garage-cum-godown, a GD Entry was recorded and he was entrusted to investigate the matter. One authority letter was issued by Deputy Superintendent of Police, Pandu Division for such entrustment, vide exhibit 8. Accordingly, he along with some police personnel were proceeded to the garage-cum-godown of Amar Roy, located at Fatasil ASEB colony. Accused Amar Roy was found sitting inside his godown and they searched the godown in presence of Amar Roy and other witnesses. One gunny bag containing suspected ganja in 27 nos. of packets wrapping with colourful gift packing papers were found. The suspected ganja were weighed and found 170 kg and also seized the same and took samples in three parts. The signatures of the accused Amar Roy and witnesses were taken on the samples and he also seized the weigh and scale vide exhibit 4. Subsequently, accused Gopal Singh appeared on the spot and both the accused persons were arrested.

12. In his cross-examination P.W.1 replied that they reached at the place of occurrence at about 11:30 a.m. In the authority letter, memo number and time of issuing were not mentioned. He had given the description of the godown in the sketch map. The owner of the godown admitted the fact that the godown was owned by him and hence, he did not make

any attempt to collect any documentary evidence regarding ownership of the godown.

13. P.W.3 is Kamala Kanta Das who is an independent witness and employee of ASEB. From his deposition, it reveals that about one year back, he was running a hotel which was situated adjacent to the garage of Amar Roy. Police raided and recovered some ganja from a house and took his signature on a seizure list vide exhibit 4.

14. In his cross-examination P.W.3 replied that he could not say wherefrom the packets of ganja have been brought by police.

15. P.W.4 is Niranjana Paul, whose evidences is not much relevant in this case. In his presence the weigh scale was seized vide exhibit 5.

16. P.W.5 is Bibekananda Das, the then DSP of Pandu Division, who deposed in his evidence that on 29.11.2009, he was working as Deputy Superintendent of Police at Pandu Division. On that day at about 10 a.m., he got a telephonic message from Bharalumukh police station that they were suspected about storing of contraband and explosive in a godown. Accordingly, he issued one authority letter in the name of Fakaruddin Barbhuyan empowering him to search the said godown vide exhibit 8. Thereafter, he was verbally informed that about 170 kg of ganja have been recovered from the godown of accused Amar Roy. The ganja along with the samples were produced before him and the samples were sent for chemical analysis vide exhibit 9.

17. In his cross-examination, P.W.5 replied that he did not mention in the authority letter, the time and office memo number since at that time he was not in his office to observe the official procedure but he put the date on exhibit 8.

18. P.W.6 is the seizure witness. From his deposition, it discloses that the incident occurred in the year 2009 when police searched the godown of accused/Amar Roy and recovered ganja, detonator, ammonium nitrate from his godown in his presence. Police seized the said

articles wherein he put his signatures vide exhibit 4(3). The witness also stated that both the accused persons were present at the time of search and recovery of the contraband articles.

19. In his cross-examination, P.W.6 replied that the accused Amar Roy claimed himself to be the owner of the godown.

20. Another seizure witness is P.W.7 who deposed in his evidence that on the date of incident he noticed that some people gathered in the godown of Amar Roy. The police had shown some dried leaves to him and seized the same in his presence by stating that those articles were ganja but he could not remember the quantity of ganja recovered by the police from the godown of Amar Roy.

21. In his cross-examination, P.W.7 replied that accused Amar Roy is a mechanic by profession and he has his own garage. His shop(P.W.7) is situated adjacent to the garage of accused Amar Roy. He did not know from where the police brought the ganja but he came to know that the ganja has been recovered from the garage-cum-godown of accused Amar Roy.

22. P.W.8 is the I/O, Profulla Bora. He deposed in his evidence that S.I Fakuruddin Barbhuyan lodged an FIR on 29.11.2009 and on the basis of the FIR, he registered a case. After filing of FIR, S.I Fakuruddin Barbhuyan handed him over the case diary. On perusal of case diary, he came to know that S.I Fakuruddin Barbhuyan has completed the investigation and collected the FSL report and accordingly he submitted charge-sheet against Gopal Singh and Amar Roy under Section 20(b)(ii)(C) of NDPS Act vide exhibit 7.

23. After going through the evidence of the aforesaid witnesses, it appears that about 170 kg of ganja were recovered from the garage-cum-godown of the accused/appellant, located at Fatasil ASEB colony. Though the accused categorically stated that he was not the owner of the said godown but from the statement of the witnesses, it is clear that the said godown belongs to the accused/appellant. P.W.6 and P.W.7 who are the independent witnesses have stated that the accused/appellant Amar Roy is the owner of the garage-cum-godown from

where the contraband ganja were recovered on the date of incident.

24. It is true that no any documents have been seized by the investigating officer regarding ownership of the said garage, whereas the accused/appellant also did not produce any document that he is not the owner of the alleged garage-cum-godown but another person. According to P.W.2, the owner of the godown admitted the fact that the godown is owned by the accused/appellant as such, he did not take any initiative to collect any documents regarding ownership of the said godown. P.W.2 also stated that he had prepared inventory immediately after seizure of the suspected narcotic drugs and it was signed by a Magistrate certifying its correctness. Though he did not annex the inventory along with the charge-sheet but kept it inside in the case diary.

25. P.W.1 is the scientific officer who examined the alleged narcotic drugs sent for chemical examination. He deposed in his evidence that he received one sealed parcel in connection with Bharalumukh P.S. G.D. Entry No. 1410 dated 29.11.2009. The parcel consisted of two exhibits with closed cover of envelope. The two sealed envelopes containing about 25 grams of plant material in each which were marked as exhibit A in each. After conducting physical and chemical test as per United Nations Drug testing manual the result was found as positive test for cannabis (ganja).

26. After going through the chemical report and evidence of the witnesses, it reveals that in the appeal the learned counsel for the appellant did not raise any question regarding procedural defect of the prosecution at the time of taking sample and forwarding for chemical examination to the FSL authority. The only question raised by the learned counsel for the appellant that in this case the provision of Section 41 and 42 of NDPS Act have not been complied with.

27. While answering the legal question that has been posed by the learned counsel for the accused/appellant, it is apt to verify the provision of section 41 and 42 of NDPS Act.

28. Section 41 of NDPS reads as follows-

S41 Power to issue warrant and authorisation.—

(1) A Metropolitan Magistrate or a Magistrate of the first class or any Magistrate of the second class specially empowered by the State Government in this behalf, may issue a warrant for the arrest of any person whom he has reason to believe to have committed any offence punishable under this Act, or for the search, whether by day or by night, of any building, conveyance or place in which he has reason to believe any narcotic drug or psychotropic substance or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed.

(2) Any such officer of gazetted rank of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including the para-military forces or the armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government if he has reason to believe from personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable under this Act or that any narcotic drug or psychotropic substance or controlled substance in respect of which any offence under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or place, may authorise any officer subordinate to him but superior in rank to a peon, sepoy or a constable to arrest such a person or search a building, conveyance or place

whether by day or by night or himself arrest such a person or search a building, conveyance or place.

(3) The officer to whom a warrant under sub-section (1) is addressed and the officer who authorised the arrest or search or the officer who is so authorised under sub-section (2) shall have all the powers of an officer acting under section 42.

29. Section 42 of NDPS reads as follows-

S42 Power of entry, search, seizure and arrest without warrant or authorisation.—

(1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from persons knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,—

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act: Provided that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.

30. The learned counsel for the appellant pointed out that in this case, the informant i.e. police personnel of Bharalumukh police station received information regarding keeping of narcotics drugs in the garage-cum-godown of accused/appellant and as directed by Deputy Superintendent of Police, Pandu Division, the informant along with some police personnel of Bharalumukh police station searched the garage-cum-godown of the accused/appellant. But the information received by the informant was not taken in writing as mandated under Section 41(2) of the NDPS Act and compliance of the said provision is mandatory.

31. Reading of Section 41 would make it clear that any officer mentioned under Section 41(2) if he has reason to believe from personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable under this

Act, may authorize any officer subordinate to him but superior in rank to a peon, sepoy or a constable to arrest such a person or search a building, conveyance or place whether by day or by night or himself arrest such a person or search a building, conveyance or place.

32. In the case in hand, it appears from the record that on receipt of the information regarding keeping of ganja in the godown, a G.D. Entry was made vide No. 1410 dated 29.11.2009 vide exhibit 3. Subsequently, the matter was informed to Deputy Superintendent of Police, Pandu Division and he issued an authority letter and deputed P.W.2 to search the godown of the present accused/appellant which was supported by the Deputy Superintendent of police, Pandu Division, who was examined in the case as P.W. 5. Even if no entry has been made by the Deputy Superintendent of police, Pandu Division in the case while giving information by the police of Bharalumukh police station and search was conducted by the S.I. of police, there is no legal bar as per Section 42(1) of the NDPS Act and the said provision independently permits the S.I. of police to search and arrest the accused.

33. On reading Section 42(1), it provides that when one among the officers mentioned therein, if he has a reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug or psychotropic substance etc., of which an offence punishable under this Act has been committed, etc. can enter into and search the building where the contraband was kept. However, Section 41(2) deals with search of a person or a place where contraband was kept by the officers mentioned therein in two ways. The first procedure provided is that the officer who got personal knowledge or information given by any person and taken in writing may authorize any officer subordinate to him but superior in rank to a person to arrest such a person or search a building etc. and or himself arrest such a person or search a building, conveyance or place.

34. No doubt, Section 41(2) applies to an officer of a gazetted rank of the departments mentioned in Section 41(2). But the scope and ambit of Section 42 is more wide and Section 42(1) authorizes any such officer being an officer superior in rank to a peon, sepoy or constable in the department either to arrest and search a building, conveyance of having

personal knowledge or information given by any person and taken in writing. In this case, though the information was given to the Deputy Superintendent of Police, Pandu Division, who is a gazetted officer empowered to authorize a subordinate officer to search and arrest or to search and arrest the person by himself, under Section 41(2), had given information to the S.I. of police. But the Deputy Superintendent of Police, Pandu Division not recorded the information that he had received in writing. But when such an information was received by the O/C of Bharalumukh police station, the said information was recorded in writing and the GD Entry was made vide exhibit 3, has been tendered in evidence to prove compliance of the mandate of Section 42(1) of the Act. Based on exhibit 3(vide GD Entry No. 1410 dated 29.11.2009), the S.I. of police had searched garage-cum-godown of the accused/appellant and contraband was seized and the accused/appellant was arrested.

35. In the decision reported in *1999 vol.6 SCC 172*, the Hon'ble Supreme Court has held that "*Sub-section (1) of Section 42 lays down that the empowered officer, if has a prior information given by any person, he should necessarily take it down in writing and where he has reason to believe from his personal knowledge that offences under Chapter 4 have been committed or that materials which may furnish evidence of commission of such offences are concealed in any building etc., he may carry out the arrest or search, without a warrant between sunrise and sunset, and he may do so without recording his reasons of belief.*"

36. In this connection, I would like to refer a decision reported in *[2004 KHC 1315]*, *State of West Bengal vs Babu Chakraborty*, where the Apex Court considered *Section 42(1) and (2) of the NDPS Act* and held that *great significance has been attached to the mandatory nature of the provisions, keeping in mind the stringent punishment prescribed in the Act. The recording of the information and ground of belief since that would be the earlier version to be available to a court of law and the accused while defending his prosecution. Therefore, failure to comply with Section 42(1), proviso to Section 42(1) and Section 42(2) would render the entire prosecution case suspect and cause prejudice to the accused.*

37. In the case of *Abdul Rashid Ibrahim Mansuri vs State of Gujarat*, reported in *2000 vol.2*

SCC 513, Koluttumottil Razak vs State of Kerala, reported in 2000 vol. 4 SCC 465, *Beckodan Abdul Rahman vs State of Kerala*, reported in 2002 vol.4 SCC 229 and *Chhunna alias Mehtab vs State of M.P.*, reported in 2002 vol. 9 SCC 363, the Hon'ble Apex Court has held that the non compliance of the provisions of the proviso of Section 42 of the Act which is mandatory, the action was held illegal and the conviction of the accused was set aside. The Hon'ble Supreme Court also held that the onus to prove compliance lies on the prosecution and in the absence of any prosecution evidence about the compliance with the mandatory procedure, the presumption would be that the procedure was not complied with.

38. In the case of *Saiyad Mohd. Saiyad Umar Saiyad & Ors. Vs State of Gujarat*, (1995) vol. 3 SCC 610, the Hon'ble Apex Court held *that the prosecution is obliged to give evidence of the search and all that transpired in its connection. It is very relevant that the prosecution witnesses speak about the compliance about the mandatory procedure and if under the evidence to this effect is not given, the Court must assume that the person to be searched was not informed of the protection. The Court must find that the possession of illicit articles under the Act was not established. It has been held that when the officer has not deposed that he had followed the procedure mandated the Court is duty bound to conclude that the accused had not had the benefit of the protection that the Act affords; that therefore, his possession of articles under the Act is not established and that the precondition for his having satisfactorily accounted for such possession had not been met; and to acquit the accused.*

39. Thus, it has to be concluded that the person authorized under Section 41(2) is authorized to search or to authorize any officer subordinate to him to search, if the gazetted officer has reason to believe from personal knowledge or information given by any person and taken in writing as provided under Section 41(2). However, Section 42 is on a much wider compass, authorizing any officer superior in rank of a peon, sepoy or constable to search if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug or psychotropic substance was kept and to search the said place.

40. In the case in hand, the Deputy Superintendent of Police, Pandu Division who had given authority to P.W.2 to search and seizure, would come under the category of gazetted officer as provided under Section 41(2) and therefore, he can either search and arrest the accused or to authorize a subordinate officer to do so. At the same time, independent power is also given to any officer including P.W.2 to search a place where contraband suspected to be kept if he has reason to believe that from his personal knowledge or information given by any person and taken down in writing as provided under Section 42(1) of the Act. It is relevant to note that any person referred to in Section 42(1) is to be considered in a broader sense and it has to be understood that any person referred to in Section 42(1), shall include the Deputy Superintendent of Police, Pandu Division, who is a gazetted officer in rank.

41. As I have already stated that on receipt of the information regarding contraband was kept in the garage-cum-godown of the accused/appellant by the officer-in-charge of Bharalumukh police station, a GD Entry No. 1410 dated 29.11.2009 was recorded and the said GD Entry was exhibited during trial vide exhibit 3. Subsequently, matter was informed to the higher authority i.e. Deputy Superintendent of Police, Pandu Division to issue authority letter to authorize a person to conduct search and seizure in the place regarding information. Accordingly authority letter was issued vide exhibit 8 directing P.W.2 to conduct search and seizure. Therefore, it is crystal clear that the provisions of Section 41 and 42 of NDPS Act has been complied with.

42. The next challenge raised by the learned counsel for the accused/appellant is that the prosecution has miserably failed to prove that the contraband was taken from the garage-cum-godown of the accused/appellant and the accused/appellant is not the owner of the said godown wherefrom the contraband was seized. In support of the fact, two witnesses were examined by the defence as D.W.1 and D.W.2.

43. D.W.1 is Alok Ranjan, who is a businessman by profession. He deposed in his evidence that he is a owner of a vehicle and accused Amar Roy has a motor garage at Fatasil Ambari. He used to repair his vehicles and vehicles of others. About five persons were working under

the garage of accused/appellant. Accused Amar Roy has no other business except repairing of vehicles.

44. In his cross-examination, D.W.1 replied that Amar Roy has no godown, he has only a motor garage.

45. D.W.2 Mira Talukdar also stated in the same tune that she resides near Fatasil Ambari ASEB colony and the garage of accused is adjacent to ASEB colony. According to D.W.2, there is a godown of Hindustan company near the ASEB colony.

46. It appears from the evidence of D.W.1 and D.W. 2 that both are resident of Fatasil Ambari, Bharalumukh. Though, D.W.2 stated that there is a godown of Hindustan company near the garage of accused but D.W.1 is totally silent regarding godown owned by Hindustan company. The accused also did not make any whisper while his statement was recorded under Section 313 Cr.P.C. that the said godown was owned by Hindustan Company.

47. In his statement under Section 313 Cr.P.C. the question was put to him that on 29.11.2009, a team of police personnel had searched his godown located at Fatasil ASEB Colony. On the question regarding ownership of the godown, the accused replied that he did not know who was owner of the said godown. The accused/appellant also denied his presence at the time of recovery and seizure of 170 kg of ganja from the said godown. According to the witnesses, along with independent witnesses, the present accused/appellant was present when the search was going on and the contraband was seized from the godown. The seizure list which was proved vide exhibit 4 before the Id. trial court bears with the signatures of accused/appellant Amar Roy and his associate Gopal Singh from which it can be presumed that the contraband ganja was seized in presence of the accused/appellant. As I have already stated that other witnesses also confirmed the presence of accused/appellant during search and seizure in the godown.

48. The evidence discussed in detail would go to show that the prosecution successfully

proved the case that 170 kg of ganja(cannabis) which are commercial quantity, were recovered from the garage-cum-godown of the accused/appellant in contravention to the prohibition contained in Section 20(b)(ii)(C) of the NDPS Act. Therefore, conviction imposed by the trial court does not require any interference in this case.

49. Coming to the sentence, Id. trial court has imposed rigorous imprisonment for a period of 10 years and to pay a fine of Rs.1(one lakh). Section 20(b)(ii)(C) provides that when the possession of contraband is of commercial quantity, the imprisonment shall be not less than 10 years, which may extend to 20 years and may also be liable to fine which shall not be less than Rs.1 lakh and which may extend to Rs.2 lakh. Thus, the Id. trial court imposed the minimum sentence and therefore, no interference in the matter of sentence is legally permissible.

50. In the result, the appeal is dismissed. The accused/appellant is directed to surrender before the Id. trial court to serve out the sentence.

51. Send back the LCR.

JUDGE

Comparing Assistant