

GAHC010264492022



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

Case No. : I.A.(CrI.)/21/2023

THE STATE OF ASSAM
REP. BY THE P.P., ASSAM.

VERSUS

JAHANGIR ALOM AND 6 ORS.
S/O ABDUL HAQUE,
VILL.- BHALUKDUBI,
P.S.- GOALPARA, ASSAM.

2:SABINA YASMIN
W/O JAHANGIR ALOM

VILL.- BHALUKDUBI

P.S.- GOALPARA
ASSAM.

3:SADDAM HUSSAIN @ CHADDAM
S/O LATE SAMSUL HAQUE

VILL.- BOHOTI CAHR

P.S.- GOALPARA
ASSAM.

4:SHAHADAT ALI
S/O RUSTOM ALI

VILL.- GUMAIJHAR
GOALPARA.

5:ASHRAFUL HAQUE @ FOKIR CHAND
S/O SAMSUL HAQUE

VILL.- SIMLABARI
GOALPARA.

6:NAZIR HUSSAIN @ MITHUN
S/O SANOWAR HUSSAIN

VILL.- GUMAIJHAR
GOALPARA.

7:JIARUL RAHMAN
S/O LATE ABDUL KHALEQ

VILL.- GAROJAN
GOALPARA

Advocate for the Petitioner : PP, ASSAM

Advocate for the Respondent : MR. A M BORA (r-1,2)

Linked Case :

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VILL.- GAROJAN

Advocate for : PP
ASSAM

Advocate for : appearing for JAHANGIR ALOM AND 6 ORS.

BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR
HONOURABLE MR. JUSTICE KARDAK ETE

ORDER

Date : 19.05.2023
(Lanusungkum Jamir, J)

Heard Ms.S.Jahan, learned counsel for the applicant. Also heard

Mr.D.K.Baidya, learned counsel for the respondent Nos. 1 and 2; Mr.S.H.Rahman, learned counsel for the respondent No.3 and Mr.A.Ahmed, learned counsel for the respondent Nos. 4 to 7.

By this application, the applicant which is the State of Assam is praying for grant of leave to file an appeal against the acquittal order dated 31.10.2022, passed by the learned Special Judge, Goalpara in Special Case No.30 of 2021, under Section 21(b)/22(c) read with Section 27A/25/29 of the NDPS Act, 1985.

The grounds for acquittal of the respondents are enumerated in paragraph 3 of the present application and the same reads as under:

“3. That on a bare perusal of the said Judgment and Order, it is manifest that the Learned Special Judge acquitted the Respondents mainly on the grounds mentioned here in below:- (a) the information received was not written down as required under Section 42 of the NDPS Act as well as the information was not given to the superior officer, (b) PW No.6, the Sub-Inspector of Goalpara PS had no authority to search and seize the substances, (c) Independent witnesses were not called before the operation and that the fact of recovery was not corroborated by any independent witnesses, (d) No inventory was prepared after the seizure as required under the law, (e) the information that substance were stored in the pharmacy was also not written down as required under Section 42 of the NDPS Act, (f) witnesses had not seen the contents which were there in the packets seized from within the pharmacy, (g) the seized drugs were not sealed and packed in the manner prescribed under the Act and the Rules, (h) the samples were also not drawn properly and neither the drugs were kept in proper custody. There are the principle grounds on which, the Learned special Judge acquitted the Respondents.”

The learned Additional PP, Assam basing on the evidence of the depositions of the PWs 3, 6 and 14 submits that the State of Assam has a case and in the interest of justice, they may be granted leave to file the appeal.

Mr.A.Ahmed, learned counsel for the respondent Nos. 4 to 7 on the other

hand objects that the acquittal has been made on cogent ground and therefore, no leave shall be granted.

We have perused the depositions of the PWs 3, 6 and 14, and on consideration of the same, and without expressing any opinion on the merit of the case, we are of the opinion that the prayer for leave to file an appeal be allowed.

Accordingly, the leave is granted.

Registry is directed to register the Criminal Appeal and list the matter in its usual course.

Interlocutory Application stands disposed of.

JUDGE

JUDGE

Comparing Assistant