

**HIGH COURT OF TRIPURA
AGARTALA**

Crl. A. No.22 of 2025

The State of Tripura,

Represented by the Secretary,

Home Department, Government of Tripura

.... Appellant.

Versus

Sahajahan Miah,

S/O Lt. Mantaj Miah Kamalnagar,

PS- Sonamura, District- Sepahijala District

.....Respondent.

For Appellant(s)	:	Mr. Raju Datta, P.P. Mr. Rajib Saha, Addl. P.P.
For Respondent(s)	:	Mr. Subrata Sarkar, Sr. Adv. Ms. Ayesha Saha Hirawat, Adv.
Date of Hearing	:	04.11.2025
Date of delivery of Judgment and Order	:	18.11.2025
Whether fit for Reporting	:	YES

**HON'BLE JUSTICE DR. T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT**

Judgment & Order

[Dr. T. Amarnath Goud, J]

Leave granted.

2. This appeal is preferred under Section 378(1)(b) of Cr.P.C. challenging the judgment and order of acquittal dated 28.02.2024 delivered by Learned Special Judge (NDPS), Sepahijala Tripura, Sonamura in connection with Case No.Special (NDPS) 52 of 2019.

3. Heard Learned P.P., Mr. Raju Datta appearing on behalf of the appellant and also heard Learned Senior Counsel,

Mr. Subrata Sarkar assisted by Learned Counsel, Ms. Ayesha Saha Hirawat appearing on behalf of the respondent accused.

4. At the time of hearing, Learned P.P., Mr. R. Datta drawn the attention of the Court that on the basis of a secret information that some contraband item was stored in the residence of accused Sahajahan Miah. Accordingly, the informant SI Srikanta Chakraborty of Sonamura PS along with others conducted raid in the house of respondent accused and recovered 338 (Three Hundred Thirty Eight) kgs of dry ganja from the dwelling house of respondent accused. Regarding possession, the accused could not show any document. Hence, search and seizure was made and the suo moto complaint was laid to O/C, Sonamura PS and accordingly the case was registered and on completion of investigation the I/O submitted charge-sheet against the respondent accused.

5. Before the Learned Trial Court, the prosecution to substantiate the charge has adduced in total 9 (nine) numbers of witnesses and the prosecution also relied upon some documents which were marked as Exhibits and on conclusion of trial, Learned Trial Court acquitted the accused on the ground that Section 42 of NDPS Act was not complied with. Furthermore, no independent witnesses supported the case of the prosecution and the prosecution also has failed to prove the chain of possession of contraband items from the possession of the accused.

6. Learned P.P. further referred **Annexure-2** and **Annexure-3** i.e. the extract copy of Sonamura PS, G.D. Entry No.11/12 dated 25.10.2018 and also the communication made by SI Srikanta Chakraborty on 25.10.2018 to SDPO, Sonamura and referring those documents Learned P.P. drawn the attention of the Court that those documents were very much relevant for decision of this case and those documents were available with the record. But in course of trial, the counsel for the prosecution failed to produce those documents for marking as Exhibits. Even the Learned Trial Court also did not consider the same at the time of appreciating the evidence on record for which the Learned Trial Court came to the erroneous observation that the case suffered from non-compliance of the provision of Section 42 of NDPS Act and furthermore, considering the other materials on record, Learned P.P. further submitted that even if it is found that no independent public witness is supporting the case of the prosecution, in that case also there is scope for convicting accused based upon the other materials on record which the Learned Trial Court has failed to consider/appreciate at the time of delivery of judgment.

Learned P.P. in support of his contention also relied upon one judgment dated 30.07.2025 delivered by this Division Bench of this High Court in Crl. A. No.04 of 2025 and submitted that this present case is squarely covered by the said judgment and urged for setting aside the judgment of the

Learned Trial Court and to remand back the matter to the Learned Trial Court for fresh trial of the accused.

7. On the other hand, Learned Senior Counsel, Mr. S. Sarkar assisted by Learned Counsel, Ms. A. Saha Hirawat appearing on behalf of the respondent accused strongly opposed the submission made by Learned P.P. and drawn the attention of this Court that considering the evidence on record Learned Trial Court rightly and reasonably has passed the order of acquittal and there is no scope to interfere with the findings of the Learned Trial Court and it was further submitted by Learned Senior Counsel that there was total non-compliance of the provision of Section 42 of NDPS Act by the prosecution before the Learned Trial Court. So, at this stage, there is no scope to fill up the gaps which emerged from the record of the Learned Trial Court by the prosecution and urged for dismissal of this appeal. Learned Senior Counsel further submitted that, if at this stage the matter is remanded back to the Learned Trial Court, in that case the respondent accused would be seriously prejudiced.

8. We have heard both the sides at length and perused the record of the Learned Trial Court including the judgment delivered by the Learned Trial Court. It is the admitted position that on the basis of the suo moto complaint laid by SI Srikanta Chakraborty, O/C, Sonamura PS registered the case. Now, if we go through the said FIR which was marked as Exhibit-5, it appears that after receipt of the information

regarding availability and storage of contraband items in the residence of Sahajahan Miah, the matter was entered in PS GD Entry No.11 dated 25.10.2018 and then immediately the information was conveyed to the higher authority for raid. In course of investigation the I/O procured the extract copy of the said GD Entry Nos.11/12/24 and also the I/O forwarded the information in this regard addressing to SP, Sepahijala District. But those documents were not proved as exhibits before the Learned Trial Court by the prosecution. Even there was no effort from the side of the Court also to consider those documents. In this regard we would like to refer herein below the relevant provision of Section 42 of NDPS Act:-

"42. 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 personal 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 V-A 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 V-A 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 in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector:

Provided further 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."

From the aforesaid provision of sub-section (2) of Section 42 it appears that 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.

9. Here in the case at hand it appears that initially the informant after receipt of the information regarding storage of contraband items entered the fact in GDE vide No.11 on 25.10.2018 and accordingly within the stipulated period he

made the communication to his controlling authority i.e. SP of the District and those documents were very much available in the record but for any reason the prosecution failed to exhibit those documents before the Learned Trial Court and even the Learned Trial Court also failed to consider those documents at the time of delivery of the judgment and came to an observation that Section 42(2) of NDPS Act has not been complied with.

10. We have also gone through the judgment delivered by this Court in CrI. A. No.04 of 2025. At the time of hearing of that case, Learned P.P. referred few citations which are available at Para nos.5, 6 and 7. For the sake of convenience, the same are reproduced herein below:-

"[5] To support his case, on the point of issuing summons to the investigating officer, learned PP has relied upon Para no.9 of a judgment of the apex court in *Shailendra Kumar vs. State of Bihar and Others* reported in (2002) 1 SCC 655 where the apex court has observed as follows:

9. In our view, in a murder trial it is sordid and repulsive matter that without informing the police station officer-in-charge, the matters are proceeded by the Court and by the APP and tried to be disposed of as if the prosecution has not led any evidence. From the facts stated above, it appears that accused wants to frustrate the prosecution by unjustified means and it appears that by one way or the other the Addl. Sessions Judge as well as the APP have not taken any interest in discharge of their duties. It was the duty of the Sessions Judge to issue summons to the investigating officer if he failed to remain present at the time of trial of the case. The presence of investigating officer at the time of trial is must. It is his duty to keep the witnesses present. If there is failure on part of any witness to remain present, it is the duty of the Court to take appropriate action including issuance of bailable/non-bailable warrants as the case may be. It should be well understood that prosecution cannot be frustrated by such

methods and victims of the crime cannot be left in lurch.

[6] On the point of prescribing an outer limit for conclusion of all criminal proceedings, learned PP has relied upon Para no.29 of a judgment of the apex court in *P. Ramachandra Rao vs State of Karnataka* reported in (2002) 4 SCC 578 where the apex court has observed as follows:

29. For all the foregoing reasons, we are of the opinion that in Common Cause case (I) (as modified in Common Cause (II)) and Raj Deo Sharma (I) and (II), the Court could not have prescribed periods of limitation beyond which the trial of a criminal case or a criminal proceeding cannot continue and must mandatorily be closed followed by an order acquitting or discharging the accused. In conclusion we hold:-

(1) The dictum in A.R. Antulay's case is correct and still holds the field.

(2) The propositions emerging from Article 21 of the Constitution and expounding the right to speedy trial laid down as guidelines in A.R. Antulay's case, adequately take care of right to speedy trial. We uphold and re-affirm the said propositions.

(3) The guidelines laid down in A.R. Antulay's case are not exhaustive but only illustrative. They are not intended to operate as hard and fast rules or to be applied like a strait-jacket formula. Their applicability would depend on the fact-situation of each case. It is difficult to foresee all situations and no generalization can be made.

(4) It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. The time-limits or bars of limitation prescribed in the several directions made in Common Cause (I), Raj Deo Sharma (I) and Raj Deo Sharma (II) could not have been so prescribed or drawn and are not good law. The criminal courts are not obliged to terminate trial or criminal proceedings merely on account of lapse of time, as prescribed by the directions made in Common Cause Case (I), Raj Deo Sharma case (I) and (II). At the most the periods of time prescribed in those decisions can be taken by the courts seized of the trial or proceedings to act as reminders when they may be persuaded to apply their judicial mind to the facts and circumstances of the case before them and determine by taking into consideration the several relevant factors as pointed out in A.R. Antulay's case and decide whether the trial or proceedings have become so inordinately delayed as to be called oppressive and unwarranted. Such time-limits cannot and will not by

themselves be treated by any Court as a bar to further continuance of the trial or proceedings and as mandatorily obliging the court to terminate the same and acquit or discharge the accused.

(5) The Criminal Courts should exercise their available powers, such as those under Sections 309, 311 and 258 of Code of Criminal Procedure to effectuate the right to speedy trial. A watchful and diligent trial judge can prove to be better protector of such right than any guidelines. In appropriate cases jurisdiction of High Court under Section 482 of Cr.P.C. and Articles 226 and 227 of Constitution can be invoked seeking appropriate relief or suitable directions.

(6) This is an appropriate occasion to remind the Union of India and the State Governments of their constitutional obligation to strengthen the judiciary-quantitatively and qualitatively by providing requisite funds, manpower and infrastructure. We hope and trust that the Governments shall act.

We answer the questions posed in the orders of reference dated September 19, 2000 and April 26, 2001 in the abovesaid terms.

[7] On the point of responsibility of the court, learned PP has relied upon Para no.19 of a judgment of the apex court in *Mina Lalita Baruwa vs State of Orissa and Others* reported in (2013) 16 SCC 173 where the apex court has observed as follows:

19. In criminal jurisprudence, while the offence is against the society, it is the unfortunate victim who is the actual sufferer and therefore, it is imperative for the State and the prosecution to ensure that no stone is left unturned. It is also the equal, if not more, the duty and responsibility of the Court to be alive and alert in the course of trial of a criminal case and ensure that the evidence recorded in accordance with law reflect every bit of vital information placed before it. It can also be said that in that process the Court should be conscious of its responsibility and at times when the prosecution either deliberately or inadvertently omit to bring forth a notable piece of evidence or a conspicuous statement of any witness with a view to either support or prejudice the case of any party, should not hesitate to interject and prompt the prosecution side to clarify the position or act on its own and get the record of proceedings straight. Neither the prosecution nor the Court should remain a silent spectator in such situations. Like in the present case where there is a wrong statement made by a witness contrary to his own record and the prosecution failed to

note the situation at that moment or later when it was brought to light and whereafter also the prosecution remained silent, the Court should have acted promptly and taken necessary steps to rectify the situation appropriately. The whole scheme of the Code of Criminal Procedure envisages foolproof system in dealing with a crime alleged against the accused and thereby ensure that the guilty does not escape and innocent is not punished. It is with the above background, we feel that the present issue involved in the case on hand should be dealt with."

11. Here in the case at hand, Learned Court at the time of delivery of judgment framed the following points for decision of the case:-

Points for determination

- (1) Whether search and seizure of contraband has been proved through seized witnesses?
- (2) Whether there was compliance of Section 42(2) of NDPS Act in this case?
- (3) Whether chain of possession of contraband has been proved?

12. Finally came to the observation that prosecution has failed to prove the case against the accused and acquitted him. But from the materials on record it appears that the trial of this case could not be conducted properly by the prosecution and even the Learned Trial Court also failed to appreciate the evidence on record properly and came to the observation that the seizure list witnesses did not support the case of the prosecution.

13. Now, if we go through the evidence of PW-2 Debashri Paul Chowdhury, Woman Constable; PW-3 Rati Kumar Debbarma, Constable; PW-4 Archana Das, Woman Constable; PW-6, Inspector Paritosh Das it appears that all the said witnesses categorically stated that the seized contraband

item was recovered from the residence of the alleged accused. But Learned Trial Court based upon the evidence on record of PW-1 Billal Hossain Majumder who only stated that Darogababu obtained his signature and he put his signature on the seizure list. But he could not say anything about the contents of seizure list and came to the observation that seizure was not proved. In this regard, Hon'ble Supreme Court in a case reported in **Rizwan Khan vs. State of Chhattishgarh** reported in **(2020) 9 SCC 627**, wherein in Para No.12 Hon'ble the Apex Court observed as under:-

"12. It is settled law that the testimony of the official witnesses cannot be rejected on the ground of non-corroboration by independent witness. As observed and held by this Court in catena of decisions, examination of independent witnesses is not an indispensable requirement and such non-examination is not necessarily fatal to the prosecution case [State of H.P. v. Pardeep Kumar, (2018) 13 SCC 808]"

From the aforesaid observation of the Hon'ble Apex Court it appears that, in absence of evidence of private witness there is scope for conviction of accused based upon evidence of official witnesses if they are found to be trustworthy. But the Learned Trial Court at the time of discussions of the evidence on record came to the findings that independent seizure witness did not support the case of the prosecution and at the time of decision of point no.3 observed that no Malkhana Register was proved and no handing over taking over memo was prepared and the In-charge of Malkhana district go-down was not examined which in our considered view was not proper on the part of the Learned Trial Court.

14. Thus, it appears to us that the Learned Trial Court failed to apply his proper mind and deviated from the established norms. In this regard, let us refer herein below the scope of the Appellate Court at the time of appeal against order of acquittal which provides as under:-

"386. Powers of the Appellate Court.- After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor if he appears, and in case of an appeal under Section 377 or Section 378, the accused if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may-

(a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law."

15. Here in the case at hand after going through the evidence on record of the Learned Trial Court and also after going through the judgment delivered by the Learned Trial Court it appears to us that Learned Trial Court failed to appreciate the evidence on record at the time of delivery of judgment and also failed to appreciate the relevant prosecution papers at the time of recording evidence of the prosecution for which in our considered view the matter needs to be remanded back to the Learned Trial Court to conduct a fresh trial by calling upon the witnesses afresh allowing the prosecution to prove the relevant documents in support of the prosecution case and thereafter to deliver a fresh judgment in accordance with law.

16. In the result, the judgment and order of acquittal dated 28.02.2024 delivered by Learned Special Judge (NDPS),

Sepahijala District, Sonamura is thus hereby set aside. The matter is remanded back to the Learned Special Judge (NDPS), Sepahijala District, Sonamura with a direction to conduct a fresh trial by calling upon the witnesses of the prosecution afresh and further allowing the prosecution to prove the relevant documents in support of the prosecution case allowing the accused to conduct the defence properly and thereupon to deliver a fresh judgment in accordance with law. However, it is made clear that if the parties want to rely upon the earlier evidence on record in that case the Learned Special Judge may examine the rest witnesses after hearing both the sides affording reasonable opportunities to the parties. The trial shall be conducted as expeditiously as possible. The respondent is hereby directed to appear before the Learned Trial Court on or before **07.01.2026**. On his surrender, the Learned Trial Court may consider bail application filed by him in accordance with law, so that his right is not infringed.

The appeal is allowed.

With this observation, this appeal stands disposed of on contest.

Send down the LCR along with a copy of this judgment/order immediately.

Pending applications, if any, also stands disposed of.

JUDGE

JUDGE

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