

**HIGH COURT OF TRIPURA
AGARTALA**

CRL. A. 29 OF 2025

The State of Tripura, represented by the Secretary, Home Department,
Govt. of Tripura.

.Appellant.

Vrs.

Saddam Hossain, S/o Lt. Mukbul Miah of Katalia, Nirvoypur,
P.S. Jatrapur, District-Sepahijala.

....Respondent.

Present:

For the appellant : Mr. Raju Dutta, P.P.

For the respondents : Mr. B. Nandi Majumder, Sr. Advocate.
Mr. Samrat Sarkar, Advocate.

Date of hearing and : **10.02.2026**
delivery of judgment

Whether fit for reporting : No

**HON'BLE MR.JUSTICE T. AMARNATH GOUD
HON'BLE MR.JUSTICE S. DATTA PURKAYASTHA**

JUDGMENT & ORDER(ORAL)

[*T. Amarnath Goud, J*]

This is a criminal appeal, under Section 378(1)(b) of CrPC against the Judgment and order dated 16.04.2024, passed by learned Special Judge (NDPS), Sepahijala Tripura, Sonamura in connection with Case No. Special (NDPS) 76 of 2019, whereby and whereunder the respondent-accused has been acquitted of the charges framed under Sections 21(C)/25 of NDPS Act.

2. The sum and substance of the prosecution case is that on 15.02.2019, at about 20:20 hours when the BSF personnel of G.Coy 145 BN, were performing patrolling duties near Peer Baba BP No.2092/17-S at that time, they found one Saddam Hossain was proceeding by riding one auto

rickshaw, bearing Registration No. TR01-C-3670 with a very high speed from Kathalia towards Nirvayapur and on seeing the BSF personnel said Saddam Hossain fled away from the spot leaving his auto rickshaw therein. It is alleged that after checking the said auto rickshaw, BSF personnel found 275 Nos. of bottles of Phensedyle, Batch No.PHB-8334 containing 100 ml in each bottle and seized those bottles. On completion of search and seizure, they lodged a suo moto complaint before the Jatrapur P.S. against the said accused. Hence, this case.

3. On the basis of that complaint, on 31.03.2019 a case was registered as Jatrapur P.S. Case No.2019/JTP/13, under Sections 21(C)/25/29 of the NDPS Act against the aforesaid accused person and investigation was initiated. Finally, after completion of investigation, the I.O. submitted charge-sheet against accused Saddam Hossain before the learned Special Judge, Sepahijala, Sonamura. Subsequently, learned Special Judge took cognizance of the offence and framed charge against the said accused for commission of offence under Section 21(C) of the NDPS Act to which the accused pleaded not guilty and claimed to be tried.

4. To prove the charge, prosecution examined as many as 13 (thirteen) witnesses and produced some material documents and objects as exhibits.

5. After closure of the prosecution evidence, accused was examined under Section 313 CrPC to which he denied that the prosecution case is false and claimed himself as innocent. He also declined to adduce any defence witness.

6. Finally, learned Special Judge after hearing the learned counsel of both sides and considering the evidence on record found the accused not guilty of the offence punishable under Section 21 (C) of the NDPS Act, and acquitted him from the charge levelled against him.

7. Being aggrieved by and dissatisfied with the said judgment and order of acquittal, the State-appellant has filed the instant appeal.

8. Heard Mr. Raju Datta, learned P.P. appearing for the appellant-State and Mr. B. Nandi Majumder, learned senior counsel assisted by Mr. Samrat Sarkar, learned counsel, appearing for the respondent-accused.

9. Mr. Raju Datta, learned P.P. in course of argument submits that a substantive quantity of contraband articles were seized from the possession of the accused while he was intercepted by the BSF personnel. Though he had fled away from the place of occurrence at that relevant date, time, but he was subsequently arrested on 03.09.2019. According to learned P.P., PW-1, Sri Vinay Mrinal, PW-2, Sri V. Gurumurthi and PW-13, Bitupan Das deposed before the learned trial Court that in their presence, the seizure memo was prepared by PW-3, Sri Santosh Kumar and they had put their signatures in the seizure list. But the learned trial Court did not consider their statements in recording the findings of the judgment. Further, learned P.P. submits that learned trial Court has failed to consider the statement of PW-8, i.e. the owner of the alleged auto rickshaw that he let out his auto rickshaw on hire to the accused-respondent in the month of April, 2018 for an amount of Rs.3000/- per month and once the alleged auto rickshaw was detained by the BSF personnel which was driven by the accused-respondent. Learned P.P. further contends that the learned trial Court did not examine the most vital witnesses of this case i.e. the complainant, seizure witnesses and the I.O. which has

caused serious misconduct to the prosecution case and acquitted the accused-respondent from the charge, absolutely on wrong and illegal appreciation of evidence. Mr. Datta, learned P.P. prays for setting aside the impugned judgment and order dated 16.04.2024 with a direction to remand back the matter to the learned trial Court for fresh trial giving reasonable opportunity to the rest of the prosecution witnesses for their examination and cross-examination.

10. Mr. B. Nandi Majumder, learned senior counsel for the accused-respondent submits that learned trial Court vide order dated 07.12.2019, the first calendar was fixed on 07.01.2020 for examination of prosecution witnesses and lastly, vide order dated 13.03.2024, learned trial Court has closed the prosecution evidence. Thus, during this long period, the prosecution could not able to produce the said witnesses to substantiate the prosecution case. There was sufficient time afforded to the prosecution, but the prosecution was not enough serious in the trial Court. Mr. Nandi Majumder further contends that there is not a single line in the memo of appeal that prosecution wanted to examine those witnesses who were very much important as the prosecution were deprived of being not examined and cross-examined those witnesses. Even, nothing is there that in the trial Court, the prosecution insisted for issuing warrant of arrest for those witnesses. Further, it is contended that if for such lapses, the prosecution is being deprived of, they could have challenged the closure of prosecution evidence by the learned trial Court before the higher forum, but they did not do so. Therefore, Mr. Nandi Majumder, learned senior counsel vehemently urged that the closure of prosecution evidence is not bad in law and the learned trial Court rightly

acquitted the accused-respondent from the liability of the charge levelled against him.

11. We have perused the impugned judgment, relevant records thereof and having regard to the submissions made on behalf of the learned counsel of both sides, this Court finds that the learned trial Court since from the year 2019 fixed calendars for examination of the prosecution witnesses and lastly, in the year 2024 closed the prosecution witnesses without examining the vital witnesses i.e. the complainant, seizure witnesses and the I.O. respectively. It appears that the prosecution at the time of trial did not insist the Court to issue warrants of arrest for those un-examined witnesses during this long period or even, the learned trial Court did not take any strong measure so that the said un-examined witnesses could be brought before the Court. Nothing serious efforts have been found in this regard.

12. This Court in catena of judgments observed that- a court cannot automatically acquit an accused under the NDPS Act, merely because the witnesses did not turn up. Courts have the power to compel the attendance of witnesses using various provisions of the Criminal Procedure Code. The Court must assess the entire evidence presented and determine if the prosecution has proven its case beyond a reasonable doubt, even in the absence of certain witnesses.

13. In view of the above, we are in opinion that the trial court had committed error in law in acquitting the accused-respondent without obtaining evidence of the important prosecution witnesses. Thus, the impugned judgment and order passed by the learned trial Court is a total miscarriage of justice and the same cannot sustain.

14. In the result, the impugned judgment and order dated 16.04.2024, passed by the learned Special Judge(NDPS), Sepahijala District, Sonamura, in case No. Special (NDPS) 76 of 2019, is hereby set-aside.

15. The matter is remanded back to the learned Special Judge (NDPS), Sepahijala District, Sonamura, with a direction to carry out a fresh trial by calling upon rest of the prosecution witnesses. However, it is made clear that reasonable opportunity shall be afforded to the prosecution witnesses and after closure of evidences of all the prosecution witnesses, learned Court below shall deliver its judgment afresh. The entire exercise shall be completed expeditiously.

16. The appeal stands allowed to the extent as indicated above. Pending application(s), if any, also stands disposed.

17. The accused-respondent is directed to surrender before the learned trial Court on or before 27.02.2026. Upon his surrender, the learned trial Court may consider bail application, if so filed by him, in accordance with law. It is needless to observe that, in the event the accused-respondent is on bail pending trial, the benefit shall be extended to him.

S.DATTA PURKAYASTHA, J

DR.T. AMARNATH GOUD, J