

HIGH COURT OF TRIPURA
AGARTALA

Crl. A. 30/2025

The State of Tripura

represented by the Secretary, Home Department, Government of Tripura.

----Appellant

Versus

Phayesha Begam, wife of late Abdul Mannan, resident of Bejimara, Ward No.4, P.S. Sonamura, Sepahijala, Tripura

----Respondent

For the Appellant(s)	:	Mr. Raju Datta, PP
For the Respondent(s)	:	Mr. J. Bhattacharjee, Advocate
Date of hearing	:	21.01.2026
Date of delivery of Judgment & Order	:	28.01.2026
Whether fit for reporting	:	Yes

BEFORE

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

JUDGMENT& ORDER

(Dr.T.Amarnath Goud, J)

Heard Mr. Raju Datta, learned Public Prosecutor, appearing for the appellant-State of Tripura. Also heard Mr. J. Bhattacharjee, learned counsel appearing for the respondent.

2. The appellant-State, by means of filing the present appeal has challenged the judgment and order dated 22.02.2024 passed by the learned Special Judge (NDPS), Sepahijala Tripura, Sonamura, in connection with case No. Special (NDPS) 82 of 2023, whereby the respondent has been acquitted from the charge under Sections 20(b)(ii)(C)/25 of the NDPS Act.

3. Facts leading to the present appeal are that, on the basis of a secret information, on 28.06.2023, the informant conducted a joint raid and search in the house of the accused-respondent and recovered 2 nos. of blue colour plastic drum containing huge quantity (86 kgs.) of contraband articles

(dry ganja) stored in the house of the accused-respondent. A specific case was registered against the accused-respondent. After completion of investigation, charge sheet was submitted against the accused respondent under Sections 20(b)(ii)(C), 25 of the NDPS Act. Thereafter, learned Special Judge (NDPS), Sonamura, took cognizance of the offence against the accused-respondent and after supplying the prosecution papers, also framed charge against the accused-respondent to which the accused-respondent pleaded not guilty and claimed to be tried. Accordingly, trial commenced. During trial, prosecution examined six witnesses out of nine witnesses and exhibited a document. Subsequently, examination of the prosecution witnesses was closed and the accused respondent was examined under Section 313 Cr.P.C. wherein he denied all the incriminating materials brought against her and thereby the learned trial Court by the impugned order acquitted the accused-respondent from the charge leveled against her on the ground that the prosecution failed to exhibit document to prove there was compliance of section 42(2) of NDPS Act. It was also held that prosecution failed to prove seizure of the contraband articles and also failed to prove chain of prosecution of contraband from the time it was seized till forwarded for forensic examination. Being aggrieved, the appellant has filed the present appeal challenging the impugned judgment and order of acquittal.

4. Mr. Raju Datta, learned PP appearing for the appellant-State, has argued that the learned trial Court did not consider that the huge quantity of contraband articles were recovered from the house of the accused-respondent and the same relates to a grave offence under NDPS Act, but the learned trial court acquitted the accused-respondent from the charges leveled against her. Mr. Datta, learned PP has further submitted that there was no violation of

Section 41(2) or 42(2) of the NDPS Act, since learned trial Court did not consider the communications made to the higher authority which were noted down in GD Entries dated 28.06.2023 and also the authorization letter issued in favour of the complainant. Learned PP has further submitted that the learned trial court without giving any opportunity to the complainant to be examined has disposed of the case in hurried manner. Learned PP has also submitted that the learned trial court did not appreciate the deposition of PW-1 who was all along with the complainant during the entire search and seizure. Learned PP has further submitted that the learned trial court did not consider the settled principle of law that no accused can be acquitted from criminal liability without facing proper trial and giving reasonable opportunity to the prosecution agency. Mr. Datta, learned PP has further submitted that notices were issued upon the witnesses but, without waiting for the service report, learned trial court whimsically closed evidence of the prosecution witnesses after examining only six witness without examining the complainant, most erroneously acquitted the accused-respondent. Mr. Datta, learned PP has further argued that many cases under NDPS Act exist where the accused persons were acquitted without providing a proper opportunity to the prosecution. Mr. Datta, learned PP has placed reliance upon the judgment and order dated **30.07.2025** passed by this Court in ***Criminal Appeal No.4 of 2025***, which deals with the similar circumstances, and urged for remanding back the case for conducting fresh trial after setting aside the impugned order dated 22.02.2024 by affording reasonable opportunity to rest of the prosecution witnesses for their examination and cross-examination.

5. On the other hand, Mr. J. Bhattacharjee, learned Counsel appearing for the respondent-State has submitted that the learned trial court

has rightly closed the prosecution evidence since there was total failure on the part of the prosecution to secure attendance of rest of the witnesses. Mr. Bhattacharjee, learned counsel has further submitted that there was non-compliance of Section 41(2) and 42(2) of the NDPS Act on the part of the prosecution. Learned counsel has further submitted that on verbal submission of the prosecution, learned trial court has closed the prosecution evidence. Mr. Datta, learned counsel has also stated the entire case is based on no evidence and failure on the part of prosecution to comply Section 41(2) and 42(2) of NDPS Act, hence urged to dismiss the appeal upholding the acquittal of the respondent.

6. We have gone through the case records and the orders contained therein.

7. The trial court took cognizance of offence on 18.10.2023 and framed charge against the accused-respondent on 22.11.2023. After commencement of trial, summon was issued upon the prosecution witnesses. The learned trial Court by its order dated 22.11.2023 fixed the calendar for examination of the witnesses on 15.12.2023, 16.12.2023, 18.12.2023 and 19.12.2023. On 15.12.2023 no witness turned up and service report upon the complainant (PW-1) returned without service. On 16.12.2023 only three witness turned up and on 18.12.2023, three witnesses were examined. On 19.12.2023 summon upon the complainant (PW-1) returned without service and in respect of other two witnesses no service return has been received, and subsequently, new calendar was fixed for PWs 1, 8 and 9 on 25.01.2024 and on 25.01.2024 no witness turned up but service report upon the complainant and another witness has returned and one message from OC Jampuijala, a prosecution witness, has been received whereby it was intimated that the

prosecution witness is unable to appear as he is on leave. On 31.01.2024, charge sheet has been filed. Accordingly, evidence was closed on 07.02.2024, and on 19.02.2024 the accused-respondent was examined under Section 313 Cr.P.C. and fixed 21.02.2024 for argument and on 22.02.2024, the learned trial court in exercise of power under Section 232 Cr.P.C. concluded the case acquitting the accused from the charges leveled against her. For convenience, the relevant orders passed by the learned trial court, are reproduced here-in-below:

"22.11.2023

Custody accused Phayesha Begam is produced from J/C.

One bail petition is filed for the accused lady by her Ld. Defence Counsel Mr. K. Mandol. Ld. Special PP Mr. M. Sen is present.

Accused copy supplied.

Upon hearing of parties and after considering the available materials in police report I find sufficient grounds to frame charge against the accused lady u/s 20(b)(ii)(C)/25 of NDPS Act. However, no ingredients are found available for framing charge u/s 29 of NDPS Act.

In the result charge are framed u/s 20(b)(ii)(C)/25 of NDPS Act to which accused pleads not guilty and claims to be tried.

Upon hearing of both sides and on careful consideration of materials available in charge sheet bail petition is rejected.

Accused is remanded to J/C till 15.12.2023.

Office is directed to issue summons upon the witnesses as per following schedule.

Ld. Special PP is also requested to take necessary steps to procure the attendance of witnesses as because custody trial is going on.

Inform.

Fix 15.12.2023 for Pws(CSW-01)

Fix 16.12.2023 for Pws(CSW-2 to 4)

Fix 18.12.2023 for Ps(CSW-5 to 7)

Fix 19.12.2023 for Pws(CSW-8 & 9)."

"15.12.2023

Custody accused Phayesha Begam is produced from J/C.

No bail petition for the custody accused.

Ld. Counsel Mr. J. Bhattacharjee, S. Ghosh and K. Mandol are present before the court for the custody accused.

Ld. Special PP Mr. M. Sen is present.

Today the case was fixed for prosecution witnesses.

No witness is present today.

Summons to the witness SI Jagabandhu Debnath has returned without service.

Accused is remanded to J/C till 15.12.2023.

To date fixed for Pws."

"16.12.2023

Custody accused Phayesha Begam is produced from J/C.

One bail petition is filed for the accused.

Ld. Special PP Mr. M. Sen is present with 3 witnesses namely Insp. Manik Debnath, Michil Miah and Ripan Miah.

All the aforesaid witnesses are examined as PW01, 02 & 03 respectively.

Heard both sides on the bail petition.

In course of hearing Ld. Defence Counsel Mr. J. Bhattcharjee appearing for the accused strongly argued for bail pointing out that by this time 3 witnesses have already been examined. According to Mr. Bhattacharjee accused lady is in custody since 28.06.2023 i.e. almost for 6 months. According to him, there is no scope for conclusion of trial immediately as because in present schedule in spite of process issued by the court complainant has not appeared in court.

Thus, Mr. Bhattacharjee referring a decision of Hon'ble the High Court of Tripura in BA no. 72/2021(Mithun Das Vs. The State of Tripura); and also showing the order of this court dated 05.10.2023 in 2023KLC073(NDPS) urged for allowing bail atleast interim bail to the accused lady for fair ends of justice.

On the other hand Ld. Special PP Mr. Sen has raised strong objection to the bail petition pointing out that complainant has not yet been examined and sufficient evidences has come for which there is no scope to allow the bail in view of rigors u/s 37 of NDPS Act.

Upon hearing of both sides I have carefully gone through the evidence, on record available materials in CS and also considering the several orders of this court passed earlier while dealing with bail petition for the accused lady I am unable to allow the bail petition holding that there is no scope at this stage for coming into a definite conclusion that accused is not guilty and shall not commit any further similar offence if released on bail.

In the result, the bail petition is rejected.

Accused is remanded to J/C till 18.12.2023.

To date fixed for Pws”.

“18.12.2023

Custody accused Phayesha Begam is produced from J/C.

One bail petition is filed for the accused.

Ld. Special PP Mr. M. Sen is present with 3 witnesses namely Diptanu Chakraborty, Delowar Hossain and Sirin Akter.

All the aforesaid witnesses are examined as PW-04, 05 & 06 respectively and discharged.

Heard both sides on the bail petition.

Mr. J. Bhattacharjee, Ld. Advocate appearing for the accused lady strongly argued for allowing bail by drawing attention of this court that by this time 6 witnesses have been examined and nothing has made out from the evidence of prosecution witnesses to presume that she would be guilty on the evidence on record.

Mr. Bhattacharjee further pointed out that from the evidence of one of the witness it was made out that complainant is very much available at SNM PS but in spite of issuing summons upon him he has not appeared to give his evidence in the court. Mr. Bhattacharjee also submits that for non examination of complainant it would be difficult to examine the IO who is scheduled to be examined on 19.12.2023 under present calendar.

Therefore, considering the available evidence on record accused lady may be released on bail considering the fact that since long i.e. from 28.06.2023 she is in custody and facing custody trial.

Mr. Bhattacharjee has also submits about the evidence on record where Pw-01 admits that fact of receiving secret information was communicated to the Higher Authority by message which amounts to non-compliance of mandatory provisions.

He has also verbally submits that earlier in some cases this court granted bail in NDPS cases after filing of charge sheet and Hon’ble High Court has also granted bail in several cases in NDPS matters. Accordingly, Mr. Bhattacharjee submits that accused lady may be released on bail on any condition.

On the other hand, Ld. Special PP Mr. M. Sen raised strong objection for granting bail pointing out that evidence of complainant not yet been examined and court cannot grant bail unless conditions u/s 37 of NDPS Act is satisfied. On going through the record it appears to me that on several occasions different judgments of Hon’ble the Apex Court as well as High Court was referred by the Defence in course of bail hearing and those were duly considered by this court.

Needless to say that under Section 37 of the NDPS Act court can grant bail only after satisfaction about twin conditions as embodied in Section 37(1)(b)(ii) of the Act.

After going through the evidence on record and also considering the fact that complainant has not yet been examined I am unable to come into a conclusion that accused lady is not guilty of charged offences and that she is not likely to commit any offence while on bail.

In the result the bail petition is rejected.

Accused is further remanded to J/C till 19.12.2023.

To date fixed for Pws.”.

“19.12.2023

Custody accused Phayesha Begam is produced from J/C.

One bail petition is filed for the accused by Ld. Counsel Mr. K. Mandol.

Ld. Special PP Mr. M. Sen is present.

No witness turned up.

Received a message from Insp. Swarna Debbarma of SNM PS with information that she is unable to attend before the court for deposition due to her illness.

Heard Ld. Special PP.

By this time 6 witnesses have been examined out of 9. Complainant as well as first IO and 2nd IO remains to be examined.

Summons to the complainant returned without service.

No service return in respect of another witness also.

Issue fresh summons upon CSW no. 01, 08 & 09.

Heard both sides on the bail petition.

Mr. K. Mandol appearing for the custody accused submits for granting bail on any condition pointing out that since 29.06.2023 accused lady is in custody and already 6 witnesses have been examined from where it was made out that case is suffering from non-compliance of statutory provisions for which there is no possibility of conviction. Further he pointed out that independent witnesses not supported the prosecution case.

Therefore, in this situation accused may be released on bail with any condition.

On the other hand, Ld. Special PP Mr. M. Sen has raised strong objection by drawing attention of this court that complainant as well as IOs have not yet been examined.

According to Mr. Sen, until and unless trial is concluded it cannot be ascertained that accused is not guilty and shall not commit any offence while on bail.

Therefore, u/s 37 of the NDPS Act there is no scope for granting bail to the accused.

Upon hearing of both sides, I have carefully gone through the records and found that yesterday also bail petition was rejected after hearing of both sides.

In fact, no new ground exists at this stage.

It is true that out of 9 witnesses already 6 witnesses have been examined but fact remains that complainant has not yet been examined who is one of the most vital witnesses of this case.

Under the aforesaid circumstances and considering the available materials on record, I am of the firm view that for non satisfaction of twin conditions u/s 37 of NDPS Act accused is not entitled to get bail.

In the result the bail petition is rejected.

Accused is further remanded to J/C till 25.01.2024.

Fix 25.01.2024 for Pws(CSW-01, 08 & 09)."

"31.01.2024

Record is put up today on special petition.

One bail petition is filed for the accused person namely Phayesha Begam by her Ld. Counsel Mr. K. Mandol.

Ld. Special PP Mr. M. Sen is present. Charge sheet has been filed u/s 20(b)(ii)C/25/29 of NDPS Act against the accused person namely Phayesha Begam.

Heard both sides on the bail petition.

Ld. Counsel for the accused referred two judgments: i) Dilip Barman Vs. The State of Tripura in BA 20 of 2023; ii) Rajjak Khan Vs. State of Rajasthan in BA 20651/2021; iii) Tapash Debnath Vs. The State of Tripura. Ld. Counsel for the accused person submits that charge sheet has already been filed and there is no prayer for custody trial from IO. Moreover, he submitted that 6 witnesses have already been examined so there is no chance of hampering the remaining witnesses.

Ld. Special PP cited one judgment of Hon'ble Supreme Court(2022 LiveLaw (SC) 613, N.V. RAMANA; CJI., KRISHNA MURARI; J., HIMA KOHLI; J. in CRIMINAL APPEAL NOS. 1001-1002 of 2022 ARISING OUT OF PETITIONS FOR SPECIAL LEAVE TO APPEAL (CRL) NO. 6128-29 OF 2021 in the case of NARCOTICS CONTROL BUREAU Vs. MOHIT AGGARWAL.

Relying upon the above judgment Ld. Special PP raised strong objection to the bail prayer and he also submits that due to the rigors of Section 37 of NDPS Act the accused person should not be released on bail.

I have perused the record and the judgment referred by the Ld. Special PP.

In the para 18 of the referred judgment it is stated that: " In our opinion the narrow parameters of bail available under section 37 of the Act, have not been satisfied in the facts of the instant case. At this stage, it is not safe to conclude that the respondent has successfully demonstrated that there are reasonable grounds to believe that he is not guilty of offence alleged against him, for him to have been admitted to bail The length of the period of his custody or the fact that the charge sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds relief to the respondent under Section 37 of the NDPS Act."

In view of the above fact this court is of the view that it is not safe to conclude that the respondent has successfully demonstrated that there are reasonable grounds to believe that he is not guilty of offence alleged against him, for him to have been admitted to bail. Also as per judgment of our Hon'ble Apex Court as cited above the length of the period of his custody or the fact that the charge sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds relief to the respondent under Section 37 of the NDPS Act.

Hence, the bail prayer is rejected.

To date fixed(07.02.2024)."

"07.02.2024

Custody accused Phayesha Begam is produced from J/C.

One bail petition is filed for the accused by his Ld. Advocate Mr. K. Mandol.

Ld. Special PP Mr. M. Sen is present.

Perused the record.

Heard both sides on the bail petition.

Ld. Special PP raised strong objection in rigors of Section 37 of NDPS Act.

It appears that on 31.01.2024 the bail prayer was rejected.

No new ground exists today.

Due to rigors u/s 37 of NDPS Act I am not inclined to allow the bail prayer in favour of the accused. Hence, the bail prayer is rejected.

Accused Phayesha Begam is further remanded to J/C till 19.02.2024.

The case is pending at the stage of prosecution witnesses and already 6 witnesses have been examined out of 9 witnesses.

So, on verbal submission of Ld Special PP the evidence of prosecution witnesses is hereby closed.

Accused Phayesha Begam is directed to furnish bail bond in compliance of Section 437A of Cr.P.C.

Fix 19.02.2024 for examination of accused person u/s 313 of Cr.P.C./ furnishing of bail bond in compliance of Section 437A of Cr.P.C."

"19.02.2024

Custody accused Phayesha Begam is produced from J/C.

Ld. Defence Counsel Mr. K. Mandol is present on behalf of the accused lady. Ld. Special PP Mr. M. Sen is present.

Today the case was fixed for examination of accused person u/s 313 of Cr.P.C.

Accused lady was examined u/s 313 of Cr.P.C. to which she denied all the evidences of prosecution witnesses and also declined to adduce any witness on her behalf.

Accused lady has furnished bail bond in compliance of Section 437A of Cr.P.C. which is checked, found correct, verified and accepted.

Fix 21.02.2024 for argument.

Accused lady is further remanded to J/C till 21.02.2024."

"22.02.2024

Accused person namely Phayesha Begam is present by filing hazira with her Ld. Defence counsel Mr. K. Mondal.

Ld. PP Mr. M. Sen is present for the State by filing hazira.

The day it was fixed for Judgment.

Accordingly, Judgment is delivered in the open court in a separate sheets of paper which is kept with the case record.

The operative part of the Judgment runs as follows:

"In the result, the accused namely Phayesha Begamis hereby acquitted from the charges under Sections 20(b) (ii) (C) /25 of NDPS Act, 1985 as framed against her and she is set at liberty at once.

Her previous surety, if any, stands discharged.

Sonamura Police Court shall dispose the seized alamats, if any, after observing all formalities on expiry of period of appeal.

Thus, the case is disposed of on contest.

Make necessary entry in the CIS."

8. 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.
9. This court in Criminal Appeal 4 of 2025 has relatably dealt with similar and identical issue-in-question, raised in this appeal, wherein in *paras 16 to 22* of the said judgment, this court has observed thus:

"[16] To deal with the case, this court thinks it apposite to extract herein below Sections 67, 87, 230 and 242 of Cr.PC.

67. Service of summons outside local limits: When a Court desires that a summons issued by it shall be served at any place outside its local jurisdiction, it shall ordinarily send summons in duplicate to a Magistrate within whose local jurisdiction the person summoned resides, or is, to be there served.

87. Issue of warrant in lieu of, or in addition to, summons-

A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person, issue, after recording its reasons in writing, a warrant for his arrest –

(a) if either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court has reason to believe that he has absconded or will not obey the summons;

(b) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.

230. Date for prosecution evidence. –

If the accused refuses to plead, or does not plead, or claims to be tried or is not convicted under Section 229, the Judge shall fix a date for the examination of witnesses, and may, on the application of the prosecution, issue any process for compelling the attendance of any witness or the production of any document or other thing.

242. Evidence for prosecution

(1)If the accused refuses to plead or does not plead, or claims to be tried or the Magistrate does not convict the accused under section 241 the Magistrate shall fix a date for the examination of witnesses.

(2)The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing,

(3)On the date so fixed, the Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution;

Provided that the Magistrate may permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross examination.

[17] The learned Public Prosecutor's submission regarding the alarming number of 145 acquittals in NDPS cases without proper opportunity to the prosecution and the subsequent resignations of public prosecutors further underscores the systemic issues at play, which warrant immediate rectification to uphold the integrity of the judicial process. The cases pertaining to 2022 were disposed of in 2024 in a hurried manner, which was not warranted.

[18] In light of the fundamental principle that a fair trial is paramount to ensuring justice, this Court notes with concern the Trial Court's premature closure of the prosecution's evidence. The Apex Court's pronouncements are unequivocal Shailendra Kumar (supra) mandates the trial court's imperative duty to secure the presence of the Investigating Officer and other crucial witnesses, even resorting to coercive measures like warrants, to prevent the frustration of justice. This critical responsibility was evidently not discharged in the present case, as the prosecution was denied the opportunity to present its full evidence. For ready reference, the same is extracted herein below:

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.

[19] Further, the decision to terminate the trial due to the mere lapse of time stands contrary to the dictum in P. Ramachandra Rao (supra), which firmly establishes that no rigid outer limit can be prescribed for the conclusion of criminal proceedings, particularly if such termination stifles the prosecution's ability to prove its case. The Trial Court's role, as clarified in Mina Lalita Baruwa (supra), is not that of a silent spectator; rather, it has an active duty to ensure all relevant evidence is brought forth and to intervene when necessary. This inherent judicial responsibility was not upheld. For ready reference, the same is extracted herein below:

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.

[20] Moreover, the principle from Prodyut Kumar Baidya (supra) reinforces the court's obligation to secure witness presence once summons are served. For ready reference, the same extracted herein below:

4. Heard the submissions of the Id. Advocates appearing for the parties. Considered the materials on record. From the impugned order it appears that the Sub-Postmaster, Katihar Post Office and

Head of Post-Office were served with the summons and they received the same. In spite of receipt of the summons, the SubPostmaster, Katihar Post Office failed and neglected to appear before the Court in answer to the summons. The Id. Magistrate sought to have taken steps according to law for securing the presence' of the witnesses before him. Instead of doing the same, he simply avoided it saying that the matter is a quasi-civil in nature and it is duty of the person who cited them as witnesses to secure his presence before the Court. The part that is to be performed by the party who cites a witness is to deposit the requisite and if on his prayer the summons are issued then it becomes the duty of the court to secure the presence of that witnesses if the summons are served upon that witness as the fiat of the court has not been complied with. In the instant case, upon the prayer of the party summons were issued and served upon the witnesses but they ignored the summons and failed to appear before the court. In such circumstances, the court is to take steps for securing their presence before the court as contemplated under the Cr. P.C. The Id. Magistrate is, accordingly, directed to take appropriate steps to secure the presence of the said witnesses before the court and for that he may consider the exercise of his power under Section 87 of the Cr. P.C. 1973.

[21] The cumulative effect of these judicial pronouncements leads this Court to conclude that the Trial Court's actions constitute a clear deviation from established norms, resulting in a miscarriage of justice that warrants the setting aside of the impugned judgment.

[22] This Court must remind the trial court of its powers and duties under the Code of Criminal Procedure, 1973, as well as the Narcotic Drugs and Psychotropic Substances Act, 1985. Section 67 of the NDPS Act deals with the power to call for information, which is often a critical piece of evidence. The trial court's duty to secure the presence of the witnesses who can testify to such information is thus integral to the prosecution's case. Under Section 242 of the Cr.P.C., the court is to proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution. This is the stage where the prosecution is to be given a fair and complete opportunity. Furthermore, Section 230 of the Cr.P.C. expressly mandates the judge to fix a date for the examination of witnesses and to issue process for compelling their attendance upon the prosecution's application. Finally, Section 87 of the Cr.P.C. provides the necessary legal mechanism, allowing the court to issue a warrant for a person's arrest in addition to, or in lieu of, a summons, if there is reason to believe the person has absconded or will not obey the summons, or fails to appear despite due service. The trial court's inaction in utilizing these statutory powers to ensure a full and fair trial for the State led to a miscarriage of justice that cannot be sustained."

10. From the record it is evident that after receiving the information, the complainant (PW-1) on the date itself i.e. on 28.06.2023 entered the information into GD vide GDE No. 14 and thereafter he intimated the matter to his superior and the sought for permission and authorization from his superior and the same was also entered into GDE No. 15, dated 28.06.2023 and on the same date itself, authorization was received from the SDPO, Sonamura for conducting raid and the same was also reflected in the GDE No. 16, dated 28.06.2023 and thereafter, the complainant alongwith staffs of the PS left for search and raid on the same date i.e. on 28.06.2023 and the same was also entered into GDE vide No. 18 dated 28.06.2023. On 28.06.2023, after receipt of the information from the complainant, the SDPO, Sonamura vide authorization letter dated 28.06.2023 authorized the complainant to cause

search and seize the contraband articles. Thereafter, on 29.06.2023, the Inspector of Sonamura PS submitted a detailed report under Section 57 of the NDPS Act to the Superintendent of Police, Bishramganj, convening the search and seizure wherein it was also intimated that if police presence was delayed, then the contraband articles would be transported/smuggled in a short period. For convenience, the GDEs, the authorization letter and the detail report under Section 57 of NDPS Act, are extracted hereunder:

"GDE No. 14, dated 28.06.2023

This time SI Jagabandhu Debnath received an information from secret source that huge quantity of Ganja are stocked in the house of one Phayesha Begam(53) W/O Lt.Abdul Mannan of Bejimara, Ward No04, PS SNM. The information presumed to be true."

"GDE No. 15, dated 28.06.2023

This time SI Jagabandhu Debnath communicate with SP(C/S)SPJ and SDPO(SNM) regarding the information received which refers to SNM PS GDE no14, dated 28/06/2023 and intimated for necessary permission and authorization for taking legal action."

"GDE No. 16, dated 28.06.2023

This time received authorization from SDPO(SNM) to proceed for conducting raid on the basis of information received which refers to SNM PS GDE no14, dated 28/06/2023."

"GDE No. 18, dated 28.06.2023

This time Insp. Manik Debnath, OC SNM PS, SI Jagabandhu Debnath, WC 11637 Sirin Akter with ps staff a/w TSR staff left PS to verify the information which refers to SNM PS GDE no14, dated 28/06/2023 after receiving authorization from higher authority search and raid in the dwelling house of one Phayesha Begam (53) W/O Lt.Abdul Mannan of Bejimara, Ward No-04, PS SNM and warrant could not be obtained as the raid was to be conducted very urgently to avoid concealing of evidences."

"Authorization Letter, dated 28.06.2023

(Authorization to search premises U/S 41(2) of the NDPS Act.1985)

To SI Jagabandhu Debnath
Of Sonamura Police Station.
(Through OC Sonamura Police Station)

Whereas from the information laid before me by SI Jagabandhu Debnath of Sonamura PS that on 28.06.2023 at 1140 hrs he received an information from his reliable source over telephone that huge quantity of Ganja are kept and concealed in the dwelling house premises of one Smti. Phayesha Begam (53) W/O Lt. Abdul Mannan of Bejimara, ward No. 04, PS Sonamura And requested to moved at spot ie Bejimara for taking further course of action as per Law. It transpired that an offence in respect of Narcotic Drugs/Psychotropic Substances/Controlled Substances has been committed in contravention of the provisions of the NDPS Act 1985 and that there is reasonable belief that such substances and other articles, things, documents which may provide evidence of the contravention of the Act and of holding illegally acquired property which are liable to seizure/forfeiture under Chapter VA of the Act are kept and concealed in the at Bejimara, in his dwelling house premises said Smti. Phayesha Begam under the Control and Occupation, now therefore, by virtue of powers vested in under Section 41(2) of the NDPS Act, 1985, you are hereby authorized to search the aforesaid place by day or by night and seize such Substances, articles, things, documents and inform the undersigned about the result of the search and action taken in respect of Substance, articles, things, documents recovered there from.."

Valid for 01(one) day.
Issued on 28.06.2023."

"Detailed report dated 29.06.2023 U/s 57 of NDPS Act

To
The Superintendent of Police
Bishramganj, Sepahijala Tripura

Reference:- Sonamura PS case no 2023 SNM 087 Date-28/06/2023 U/S-20(b)(ii)(C)/25/29 of NDPS Act 1985.

Subject:- Submission of details report U/S-57 of NDPS act.

Sir,

With reference to the cited above I have the honour to inform you that on 28/06/2023 at 1140 hrs the complt. of the case namely Jagabandhu Debnath sub-inspector of police received an information from secret source that a huge quantity of suspected to be dry cannabis are kept and concealed in the dwelling house of one smt. Phayesha Begam (53) W/O Lt. Abdul Mannan of Bejimara ward no- 04 PS- Sonamura Dist. Sepahijala and requested for police present at spot i.e. Bejimara ward no. 04 for taking further course of action as per law immediately, if police presence is delayed then contraband items will be transported/ smuggled very shortly. The matter is reflected in GD vide SNM PS GDE no -14 dated-28/06/2023 and conveyed the matter to OC PS and

SDPO SNM and originated a letter of intimation to SP(C/S) Sepahijala Tripura and for authorization noted in GDE no-15 dated-28/06/2023 and obtained written permission from SDPO SNM noted in GDE no 16 dated-28/06/2023. after prior permission from superior authority SI Jagabandju Debnath along with women constable no-11637 Sirin Akter, spo-109 Delowar Hossain, NK no.97050181 Uttam Kumar Das of 11-BN TSR, Pathaliaghat and other TSR staff rifle men 01010521 Kamal Debbarma, Rifle men no. 02010522 Gour Sundar Roy, Riflemen no. 06111317 Ajoy Debbarma all are 11 BN TSR and accompanied by OC Sonamura PS Manik Debnath Inspector of police along with other PS staff and with investigation kit left PS for Bejimara ward no. 04 noted in GD vides no-18 dated-28/06/2023. On arrival at Bejimara ward no. 04, the complt. called two local people for remain presence at the time of pre-search, search memo, he prepared search memo and conducted raid and search in the house of alleged owner namely smt. Phayesha Begam (53) W/O Lt. Abdul Mannan of Bejimara ward no. 04 PS- Sonamura Dist. Sepahijala and during search the complt. found 2(two) no's blue colour plastic drums inside containing suspected to be dry ganja(cannabis) which is kept in her(AP) dwelling house and during search the complt also found available the house owner namely smt. Phayesha Begam(53) W/O Lt. Abdul Mannan of Bejimara ward no. 04 PS- Sonamura dist. Sepahijala, thereafter the complt. have recovered this contrabands drums, on measuring it is found that total weighing approx-86(eighty six) kg suspected to be dry ganja including drums out of which exhibits marked "A" containing 42 kg, exhibits marked "B" containing 44 kg after preparing proper seizure list in presence of independence witnesses and presence of OC Sonamura PS Manik Debnath, who is acting as gazette officer, after that he detained the alleged house owner smt. Phayesha Begam(53) W/O Lt. Abdul Mannan of Bejimara ward no. 04 PS. Sonamura dist. Sepahijala on being found available and brought to PS after completion of seizure, the complt. taken over the custody of seized articles on arrival at PS the complt. handed over the seized articles to OC Malkhana of SNM PS which is taken into the custody and kept at Malkhana vide SNM PS MR no. 400/23 dated 28/06/2023.

On returned at PS SI Jagabandhu Debnath lodged a Suo-Moto complain to the O/C Sonamura PS against smt. Phayesha Begam (53) W/O Lt. Abdul Mannan of Bejimara ward no. 04,PS-SNM for taking. necessary action as per provision of Law

On the basis of Suo muto complain of the complainant registered the instant case and OC PS endorsed to me for its investigation.

This is for favour of your kind information and perusal please."

10. Section 41 of the NDPS Act, reads as follows:-

"41. 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 Chapter IV, 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 in respect of which an offence punishable under Chapter IV has been committed or any document or other article which may furnish evidence of the commission of such offence 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 or of the Border Security Force 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 Chapter IV or that any narcotic drug, or psychotropic substance in respect of which any offence punishable under Chapter IV has been committed or any document or other article which may furnish evidence of the commission of such offence has been 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 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.

Section 42 of the NDPS Act, provides:-

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 or of the Border Security Force 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, in respect of which an offence punishable under Chapter IV has been committed or any document or other article which may furnish evidence of the commission of such offence 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) 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 Chapter IV relating to such drug or substance; 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 Chapter IV relating to such drug or substance:

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 sun set and sun rise 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 forthwith send a copy thereof to his immediate official superior.

Here it is also necessary to read Section 50 of the NDPS Act, which is extracted here-in-below:

"50. Conditions under which search of persons shall be conducted.—

(1) When any officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazette Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.

(2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in subsection (1).

(3) The Gazette Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(4) No female shall be searched by anyone excepting a female.

(5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazette Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior".

From the above, it is clear that it is not mandatory for the superior officer to be physically present at the scene of a raid and search, provided that the legal requirements regarding authorization and information are fulfilled. Intimation to the superior officer can satisfy the requirements. Here in this case, immediately after getting the secret information, the complainant conveyed the matter to his superior and sought for authorizing him to conduct the search and raid subsequent to which he was authorized thereby, and the communications were also recorded in the GD books, as mentioned hereinabove. It is also seen that on receipt of information, GD was made and on apprehension of the contraband articles being transported, the complainant opted for authorization from his superior by making GD which was accorded and in pursuance thereof, the search party apprehended the accused and recovered the contraband from her and the custody of the contraband from the time of recovery to the time, it reached the trial Court stands sufficiently explained. The samples have been taken and requisite seals have been affixed.

It is clear that the samples which were taken from the seized contraband had been sent for analysis and the test report has confirmed that what was seized was contraband. Thus, all the mandatory provisions of N.D.P.S. Act, required in this case, have been complied with. Further, from the seizure memo, it is confirmed that the contraband articles were seized from the possession of the accused-respondent. Further, the charge-sheet also reveals that the house from where the contraband articles were recovered belongs to the accused-respondent. Further, it was the complainant himself to prove the prosecution papers in the trial, but the same cannot be exhibited since the complainant was not afforded with reasonable opportunity to depose as witness before the learned trial court. The complainant was the most vital witness in the case but, facts remain, he was not afforded opportunity to depose before the learned court and without his examination, the evidence was closed. To ensure appearance of a witness, the court uses legal mechanisms by rendering summon upon the witness and if the witness fails to appear after being served with a summons, the court can issue aailable or non-bailable warrant to compel his/her attendance, but, the learned trial court refrains itself from adopting such procedure rather closed the evidence without securing evidence of the vital witness (complainant).

11. When a court has previously dealt with a similar issue, the legal principle of **precedent** generally requires that the same law be applied to ensure consistency and predictability in the legal system. In light of the precedents cited, the Court held that the trial court had committed error in law in acquitting the accused-respondent without securing evidence of the prosecution witness. Thus, the impugned judgment and order passed by the learned trial Court is a miscarriage of justice and the same cannot sustain.

12. In fine, the impugned judgment and order dated 22.02.2024 passed by the learned Special Judge(NDPS), Sepahijala District, Sonamura, in case No. Special(NDPS) 82 of 2023, is hereby set-aside. Accordingly, 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 rest of the prosecution witnesses. However, it is made clear that reasonable opportunity shall be afforded to the prosecution witnesses. It is further made clear that after closure of evidences of all the prosecution witnesses, learned Court below shall deliver its judgment afresh. The entire exercise shall be completed expeditiously.

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

13. The accused-respondent is directed to surrender before the learned trial Court on or before 10.02.2026. Upon his surrender, the learned trial Court may consider bail application, if so, filed by her, 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 her.

S.DATTA PURKAYASTHA,J

DR.T. AMARNATH GOUD,J

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