

**IN THE HIGH COURT AT CALCUTTA  
CRIMINAL APPELLATE JURISDICTION**

Present:

**The Hon'ble Justice Tirthankar Ghosh**

**C.R.A. (SB) 125 of 2024**

***Md. Ilias Hussain @ Eleyas Hossene and another  
versus  
The State of West Bengal***

For the Appellants : Mr. Uday Sankar Chattopadhyay,  
Ms. Rajashree Tah,  
Ms. Aishwarya Datta.

For the State : Mrs. Anasuya Sinha,  
Ms. Nahid Ahmed.

**Heard On : 24.07.2024 & 06-08-2024.**

**Judgement On : 06-08-2024.**

**Tirthankar Ghosh, J. :**

The present appeal has been preferred against the judgement and order of conviction and sentence dated 20.04.2024 and 22.04.2024 in Case No. N-69/2022 passed by learned Additional District and Sessions Judge, 6<sup>th</sup> Court, Barasat wherein the learned trial court was pleased to acquit the appellants under Section 21(c) of the NDPS Act, but convicted both the appellants for commission of offence under Section 14 of the

Foreigners Act, 1946 thereby sentencing both of them to undergo rigorous imprisonment for a period of three years with a fine of Rs.2000/- in default to undergo rigorous imprisonment for one month.

The genesis of the present case relates to Bagdah Police Station Case No. 360/2022 dated 17.05.2022 wherein the Investigating Officer on conclusion of investigation submitted charge-sheet under Section 21(c) of the NDPS Act and Section 14 of the Foreigners Act. The allegations as set out in "Brief fact of the case" in the charge-sheet are as follows :

"The case was started on the basis of written complaint of AC Vinod Kumar Dubey, Coy Commander, "B" Coy, 68 Bn BSF, BOP-Mamabhagina, PS- Bagdah, North 24 Pgs against (i) Md Ilias Hussain (35), S/O- Hazrat Ali, (ii) Md Mehedi Hassan (20), S/O- Mousa Mitran both of Anduliya, PO-Sukpukuriya, PS- Choughacha, Dist- Jessore, Bangladesh to the effect that on 16.05.2022 at about 22:45 hrs on duty BSF personnel observed suspicious movement of 02 persons tried to cross IB border from India side to Bangladesh side. The BSF party challenged them and apprehended the above noted accused persons near BP No- 41/5-S, BOP- Mamabhagina under PS Bagdah. After that BSF personnel searched them and recovered 75 bottles of Phensedyl vide Batch No- PHB22040 in 02 packets from the above noted accused persons and brought them to BOP-Mamabhagina for PQR and documentation to hand over to Bagdah PS for legal action against them. Details are noted in FIR. Being endorsed by O/C Bagdah PS I SI Subrata Kr Palit took up its investigation.

During investigation I examined the complainant and his statement corroborated with the fact of FIR so further I did not recorded his statement. I received the memo of arrest, copy of seizure list and M/C of arrested accused persons namely (i) Md Ilias Hussain (35), S/O- Hazrat Ali, ii) Md Mehedi Hassan (20), S/O- Mousa Mitran both of Anduliya, PO-Sukpukuriya, PS- Choughacha, Dist- Jessore, Bangladesh on 17/05/2022. I visited the P.O. and drew rough sketch map of the P.O. I examined all available witnesses and their statements were recorded u/s 161 Cr.P.C. I verified the seized articles. I also forwarded the above noted arrested accused persons before Ld. Addl Dist and Session Judge, 6<sup>th</sup> Court Barasat, North 24 Pgs on 18/05/2022. I received State Drug control & Research Laboratory, 2 No convent lane, Kolkata- 15 report from Bagdah P.S Received & Dispatch Section through Ld. A.D.J, 6<sup>th</sup> Court Barasat, North 24 Pgs vide certificate of test No-SDCRL/1459, Dt- 18/08/2022. On perusing it is came to know that Director State Drug control & Research Laboratory, 2 No convent lane, Kolkata- 15 opined that (Ex- A1) are positive for the presence of Codeine Phosphate. The samples (Ex- A1) contain Codeine Phosphate and hence come under the purview of NDPS Act, 1985.

During investigation considering all evidences so far a prima-facie charge u/s- 21(C) NDPS Act & 14 Foreigners Act has well been established against the accused persons namely (i) Md Ilias Hussain (35), S/O-Hazrat Ali, ii) Md Mehedi Hassan (20), S/O- Mousa Mitran both of Anduliya, PO-Sukpukuriya, PS-Choughacha, Dist- Jessore, Bangladesh.”

The trial court also framed charges under the aforesaid sections and after examination of the prosecution witnesses acquitted the

appellants under Section 21(c) of the NDPS Act, but convicted them under Section 14 of the Foreigners Act, 1946.

Learned advocate appearing for the appellants submits that the appellants do not intend to press the appeal on merits, but wish to pursue the appeal on the limited point of the issue relating to sentence so imposed by the learned trial court.

Records of the case reflect that the appellants were produced before the learned Special Court on 18.05.2022 and since then they are in custody. The appellants as such during the stage of investigation, trial and appeal has undergone sentence of more than two years two months.

Having considered the period of detention already undergone by the appellants, the sentence so imposed by the learned trial court in connection with Case No. N-69/2022 is modified to the period already undergone by the appellants. As such, if the appellants are not wanted in connection with any other case, the Ministry of External Affairs, Government of India is directed to take steps so that the appellants are sent back to their own nation.

With the aforesaid observations, the appeal being CRA (SB) 125 of 2024 is partly allowed limited to the issue relating to sentence.

Pending connected application is consequently disposed of.

Department is directed to send back the lower court records immediately to the learned trial court and also communicate this order to the learned trial court as well as the concerned jail authorities.

All concerned parties shall act on the server copy of this judgement duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of this judgement, if applied for, be given to the parties upon compliance with all requisite formalities.

**(Tirthankar Ghosh, J.)**

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