

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.702 of 2023

Arising Out of PS. Case No.-21 Year-2017 Thana- D.R.I District- Patna

-
1. Bijoy Roy, Son of Bijen Roy, Resident of village - Bhola More, Jamuribhita Dabgram (P), P.O. - Sahudangi Hat, P.S. - Bhaktinagar, Distt. - Jalpaiguri, West Bengal
 2. Satto Mandal @ Bhukhmari Mandal, Son of Sri Ram Chandra Mandal, Resident of village - Bhola More, Jamuribhita Dabgram (P), P.O. - Sahudangi Hat, P.S. - Bhaktinagar, Distt. - Jalpaiguri, West Bengal

... .. Appellants

Versus

The Union of India through Intelligence Officer D.R.I., Regional Unit, Patna Bihar

... .. Respondent

Appearance :

For the Appellant/s : Mr. Ajay Kumar Sinha, Advocate
For the Respondent/s : None

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 08-07-2025

Heard learned counsel for the appellants. No one appears on behalf of the respondent.

2. The present appeal arises out of the judgment of conviction dated 09.12.2020 (hereinafter referred to as the 'impugned judgment') and the order of sentence dated 14.12.2020 (in short referred to as the 'impugned order') passed by the learned Additional Sessions Judge-XXV-cum-Special Judge, Patna in Special Case No. 39 of 2017 arising out of DRI Unit Case No. 21 of 2016-2017 (State through the informant Ashok Kumar,



Intelligence Officer, DRI, Regional Unit, Patna Vs. Litu Das & Others).

3. By the impugned judgment, the learned trial Court has convicted the appellants of the charges under Section 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called the 'N.D.P.S. Act'), the appellants have been, however acquitted of the charges under Sections 23, 25 and 29(1) of the N.D.P.S. Act. The learned trial Court has awarded a sentence of rigorous imprisonment for 12 years and a fine of Rs. 1,00,000/-(one lakh) each for the offences committed under Section 20(b)(ii)(c) of the N.D.P.S. Act. In default of payment of fine, each accused shall undergo for further rigorous imprisonment of two years which shall be in addition to the sentence awarded for the offence. The period for which the accused persons have already undergone into judicial custody shall be set off from the sentence in accordance with Section 428 Cr.P.C.

Prosecution case

4. The case of the prosecution according to the complaint in brief is that on 04.03.2017, acting on the specific information regarding smuggling of *ganja* from Train No. 12523 NJP-NDLS Superfast Express, a team comprising the officers of DRI, Patna rummaged the Sleeper Coach No. S-2 in between 20.30 hrs and 22.15 hrs and intercepted three passengers who were traveling from New Jalpaiguri to New Delhi with the materials



smelling like *ganja* contained in five bags (2 trolly, 2 air bag and 1 *thaila*). Those persons identified themselves as Litu Das, Sattu Mandal @ Bhukhmari Mandal and Bijoy Roy. They along with five bags were taken into custody by the team of DRI at Chhapra Junction. They were searched and all the five bags were opened in presence two independent witnesses where from total fourteen packets containing the substance like *ganja* were recovered. The gross weight and net weight of the packets of *ganja* was found to be 47.950 Kg. and 45.500 kg respectively. The complainant seized the said *ganja* at 13.30 hrs on 05.03.2017 for violation of Section 8(c) of the NDPS Act. Accordingly, seizure memo and punchanama were drawn by the officers of DRI, Patna before two independent witnesses and the three intercepted persons. Further, all the three intercepted persons were arrested on 05.03.2017 for the necessary action.

On the basis of this complaint, DRI Unit Case No. 21 of 2016-17 dated 05.03.2017 was registered under Sections 20, 22, 29 of the NDPS Act and on being receipt in the court of Sessions Judge, Special Case No. 39 of 2017 was registered. After completion of investigation, police submitted final investigation report-cum-complaint dated 31.08.2017 under Sections 20, 23, 25 and 29 of the NDPS Act against accused persons, namely, Litu Das, Sattu Mandal @ Bhukhmari Mandal and Bijoy Roy. After submission of chargesheet, learned trial court vide order dated 31.08.2017 took



cognizance of offences under Sections 20, 23, 25 and 29 of the NDPS Act. Charges were read over and explained to the accused persons in Hindi to which they pleaded not guilty and claimed to be tried. Accordingly, vide order dated 28.11.2017, charges were framed under Sections 20(b)(ii), 23, 25 and 29(1) of the NDPS Act.

In course of trial, the prosecution examined as many as seven witness and exhibited several documents to prove it's case. The list this case on of prosecution witnesses and exhibits on its behalf are being shown hereunder in tabular form:-

List of Prosecution Witnesses

PW-1	Ashok Kumar
PW-2	Pankaj Kumar
PW-3	Somesh Ranjan
PW-4	Rakesh Ranjan
PW-5	Bimal Kumar
PW-6	Manish kumar Sinha
PW-7	Ratneshwar Kumar Singh

List of Exhibits on behalf of prosecution witnesses

Exhibit -1	Panchnama
Exhibit – 2	Seizure Memo
Exhibit – 3, 3/1 & 3/2	Statement of Litu Das, Satto Mandal and Bijoy Roy, recorded u/s 67 of NDPS Act
Exhibit – 4, 4/1 & 4/2	Arrest memo of Litu Das, Satto Mandal and Bijoy Roy
Exhibit – 5	Forwarding of the accused persons dated 05.03.2017
Exhibit – 6	Test memo dated 06.03.2017
Exhibit – 6/1	Report of Chemical Examiner dated 15.03.2017
Exhibit – 7	Inventory of the seized articles dated 28.03.2017
Exhibit – 8	Final Investigation Report cum Complaint



	dated 31.08.2017
Exhibit – 9	Sample of Ganja taken on 28.03.2017

Findings of the Learned Trial Court

5. Learned trial Court after analyzing the evidences available on the record found that all the prosecution witnesses have supported the fact that the alleged contraband i.e. *ganja*, has been recovered from the possession of the accused persons and burden was upon the accused to account satisfactorily that they were not in possession of the alleged contraband. Learned trial Court further found that even defence has not denied that they were not traveling with the alleged train. They have also not denied the fact that they were not sitting on the berth no.21 and 22 of Coach No. S-2 rather the PWs 1 to 6 have clearly deposed that from when and where the *ganja* has been recovered from the possession of the accused persons.

6. Learned trial Court found that the prosecution has adduced consistent evidence and they have not made any contradictory statement in their cross-examination. Learned trial Court observed that there is no evidence on the part of the accused persons to disbelieve the evidence of the prosecution.

7. Learned trial Court found that PW 1 who is the I.O. of this case had identified the panchanama and seizure list in this case which has been marked Ext.1 and Ext.2 from which it appears that all the three accused persons have put their signatures on the said panchnama and seizure list apart from the independent witnesses and



I.O. of the case. Learned trial Court observed that during trial defence has not raised any objection that the alleged signatures do not belong to them.

8. Learned trial Court found from the evidence of PW 1 that samples of *ganja* were drawn in presence of the independent witnesses and the report of examiner establishes that the same is characteristic of *ganja*. Accordingly, learned trial Court held that the prosecution has proved the case that all the three accused persons were involved in transporting the *ganja* inter-State and total 45.500 Kg *ganja* recovered from their possession which comes under the commercial quantity and in result, they have been convicted for the offence under Section 20(b)(ii)(c) of the N.D.P.S. Act.

Consideration

9. It appears from the records that the impugned judgment and order was earlier challenged by one of the convicts, namely, **Litu Das in Cr. Appeal (DB) No. 203 of 2021** before this Court. The said appeal was heard and finally decided by judgment dated 27.06.2023 passed by a learned predecessor Bench of this Court.

10. In Cr. Appeal(DB) No. 203 of 2021, the Hon'ble Division Bench of this Court having examined the impugned judgment and order of the trial Court as well as the records held that the prosecution could not establish that the bags containing '*ganja*' were recovered from the possession of the appellant. It has been further held that in the light of the judgment of the Hon'ble Supreme



Court in the case of **Tofan Singh Vs. State of Tamil Nadu** reported in **(2021) 4 SCC 1** the officers vested with the powers under Section 53 of the N.D.P.S. Act are the police officers within the meaning of Section 25 of the Evidence Act as a result of which any confessional statement made before them would be barred under the provisions of Section 25 of the Evidence Act and cannot be taken in evidence to convict an accused for an offence punishable under the provisions of N.D.P.S. Act. The findings of the Hon'ble Division Bench of this Court in case of **Litu Das** (supra) may be found in paragraph nos. '8' to '12' of the judgment in Cr. Appeal(DB) No. 203 of 2021. We reproduce paragraph '8' to '12' of the judgment in Cr. Appeal(DB) No. 203 of 2021 as under:-

"8. We have carefully perused the impugned judgment and order of the trial court as well as the lower court's records. We have given our thoughtful consideration to the rival submissions advanced on behalf of the parties.

9. We find force in the submissions made on behalf of the appellant that the bags said to be containing *ganja* were not recovered from the possession of the appellant. The recovery of the *ganja* from beneath the berth of a train on which the appellant was found to be sitting cannot be said to be recovery from possession of this appellant. As is the prosecution's case the said bags containing *ganja* were recovered from berth no. 21 and 22. There is no evidence to the effect that the said berths were reserved in the name of the present appellant. Section 54 of the NDPS Act shall have no application in the present case as the prosecution cannot be said to have established that the bags containing *ganja* were recovered from the possession of this appellant. Section 54 of the NDPS Act reads thus:-

54. Presumption from possession of illicit articles. In trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under this Act in respect of:-

(a) any narcotic drug or psychotropic substance or controlled substance;

(b) any opium poppy, cannabis plant or coca plant growing on any land which he has cultivated;

(c) any apparatus specially designed or any group of utensils specially adopted for the manufacture of any narcotic drug or psychotropic substance or controlled substance; or

(d) any materials which have undergone any process towards the manufacture of a narcotic drug or psychotropic substance



or controlled substance, or any residue left of the materials from which any narcotic drug or psychotropic substance or controlled substance has been manufactured, for the possession of which he fails to account satisfactorily.

10. It can be easily culled out on bare reading of Section 54 of the NDPS Act that presumption under the said Act will arise only when the recovery is made from possession of a person when he fails to account for such possession satisfactorily. Here is a case where, according to the prosecution, the appellant disclosed to the DRI officials that those articles belonged to him. The submissions made on behalf of the DRI with reference to Section 54 of the NDPS Act cannot be accepted and accordingly, it is rejected.

11. Further we find force in the submissions advanced on behalf of the appellant that a confessional statement made by an accused before the officials investigating a case under the provisions of the NDPS Act are not admissible in evidence in the light of the Supreme Court's decision in case of **Tofan Singh** (supra). In no uncertain terms the Supreme Court has laid down in case of **Tofan Singh** (supra) that the officers who have been invested with the powers under Section 53 of the NDPS Act are police officers within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made before them would be barred under the provisions of Section 25 of the Evidence Act and cannot be taken in evidence to convict an accused for an offence punishable under the provisions of NDPS Act. Further, a statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement at the trial of an offence punishable under the NDPS Act, the Supreme Court has concluded.

12. In view of clear enunciation of law in case of **Tofan Singh** (supra), the confessional statements taken by the DRI officials cannot be taken into account in view of the bar under Section 27 of the Act for conviction of the appellant. We reiterate that disclosures said to have been made by this appellant and another person put on trial to the DRI officials are the only materials which connect this appellant with the bags containing *ganja* said to have been recovered by the DRI officials. Further, we notice that there has been no proper compliance of the requirement under Section 52-A of the NDPS Act, inasmuch as, the samples were not drawn in the presence of a Magistrate."

11. We find from the materials available on record that

when the prayer for suspension of sentence and release of these appellants on bail came to be considered by this Court, learned Senior Standing Counsel for the D.R.I. did not controvert the submissions of learned counsel for the appellants that their case would be fully covered by the judgment of the Hon'ble Division Bench of this Court in Cr. Appeal(DB) No. 203 of 2021.

12. In result, we are of the opinion that the impugned



judgment of conviction and the order of sentence as against these appellants are also liable to be set aside. Accordingly, we set aside the impugned judgment and order.

13. The appellants are acquitted of the charge of commission of offence punishable under Section 20(b)(ii)(c) of the N.D.P.S. Act.

14. This appeal is accordingly allowed.

15. The appellants are on bail. They, along with their sureties are discharged from the liabilities of their bail bonds.

16. A copy of this judgment together with the trial court's records be sent down to the trial court.

17. While the judgment was being dictated, Mr. Ankit Kumar Singh, learned proxy counsel appeared in this case without the brief of the case and firstly wanted to impress upon this Court that he is J.C. to the Senior Standing Counsel so, he is putting his appearance but having understood that he was without brief and has no idea of the case, learned counsel submitted that the senior standing counsel has already left the Court and that is why he has come, but he is not in this case.

18. After the judgment was fully dictated, the leaned counsel submits that perhaps the Senior Standing Counsel was not feeling well so he has gone outside the Court to his residence. This Court would not accept such submissions at the fag end when no mention was made for adjournment of the matter when the Court



sat at 2.15 P.M. to take up the hearing matters. Such kind of pleas would not inspire the confidence of the Court and it is required to be discouraged. We have already passed the judgment and are not inclined to grant any adjournment, as the judgment has been dictated in the open Court.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

Lata/Jagdish/-

AFR/NAFR	
CAV DATE	
Uploading Date	10.07.2025
Transmission Date	10.07.2025

