

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

Present:

The Hon'ble **Justice Prasenjit Biswas**

C.R.A. 45 of 2010

Ram Avtar Show @ Ram Abtar Shaw

-Versus-

The State of West Bengal

For the Appellants : **Mr. Swapan Kumar Mallick,
Ms. Sudeshna Das.**

For the State : **Mr. Arindam Sen,
Mr. Mir Anuruzzaman.**

Hearing concluded on : **02.05.2025**

Judgment On : **01.08.2025**

Prasenjit Biswas, J:-

1. This criminal appeal is preferred under Section 374 of the Code of Criminal Procedure, 1973 by the appellant being aggrieved and dissatisfied with the judgment and order dated 16.11.2009 and 17.11.2009 passed by the learned Judge, Special Court, under NDPS Act, Howrah, whereby this appellant has been convicted for offence punishable under Section 20(b)(ii)B of the NDPS Act, (hereinafter

referred to as the 'Act') and sentenced to undergo one year rigorous imprisonment with fine of Rs. 10000/- along with default stipulation.

2. The case of the prosecution in nutshell is that:

“Police received a telephonic information that a person was carrying ganja in a polythene packet and standing near 64, N.S. Road, P.S. Howrah to deliver the same to other person and after diarising the information being Howrah P.S. G.D.E. No. 1284 dated 14.06.2005 and after having informed the O.C., Howrah Police Station and as per the direction of the O.C., the de-facto complainant along with other police personnel left the police station to work out the information by Vehicle No. WB-12A-6310 along with the investigation box and Government supplied weighing machine and weight. At about 22.20 hrs. they reached near to Dhar's Travels and left the vehicle on N.S. Road and identified the accused who was standing at the North side of 64, N.S. Road holding a polythene packet in his right hand. On being asked the accused disclosed his identity as Ram Abtar Shaw of 365/2, Belilious Road, Howrah. On asking the accused confessed that he was carrying 'ganja' to deliver the same to other. The accused was informed that he had lawful right to be searched in presence of a Magistrate or a Gazetted Officer to which he agreed to be searched in presence of a Gazetted Officer. De-facto complainant informed the fact over R.T to Howrah P.S. and

accordingly Sri Sujit Ganguly, Additional O.C. Howrah P.S. reached at the spot. The Additional O.C. informed the accused person that he has lawful right to be searched in presence of a Gazetted Officer or a Magistrate and the accused person agreed to be searched in his presence. Thereafter, de-facto complainant made search of the polythene packet which contained ganja as held in the right-hand grip by the accused and after weighing the contents it was found of 1 kg. 500 gms. No valid document was produced on behalf of the accused for carrying 'ganja' and the same was seized. After preparing seizure list it was levelled and sealed in presence of the witnesses and the accused person. Sample was taken out of the total 'ganja' on the spot. Police arrested the accused and the case was started by the concerned police station."

3. After completion of investigation, charge-sheet was submitted by the prosecuting agency under Section 20(ii)(B) of the NDPS Act against the accused person. Charge was framed by the Trial Court under Section 20(ii)(B) NDPS Act. 12 (twelve) witnesses were examined by the side of the prosecution. Documents as well as the seized articles were marked as exhibits on behalf of the prosecution in connection with this case. After closure of prosecution evidence, the accused was examined under Section 313 of Cr.P.C. to which he inclined to adduce witnesses on his

behalf. The accused himself was examined with the permission of the Trial Court as DW1 and his wife was examined as DW2 in this case.

4. Mr. Swapan Kumar Mallick, learned Advocate for the appellant submitted before the Court, inter alia, that the order of conviction and sentence passed by the learned Trial Court suffers from infirmities and the learned Trial Judge proceeded on the basis of conjectures and surmises and, therefore, the order of conviction and sentence is bad in law and liable to be set aside. It is further contended by the learned Advocate that PW1 and PW2 who were cited as independent witnesses to the seizure stated in the same voice during cross-examination that on the relevant point and time although they were in their shop room but on asking by the police they put their respective signatures on blank papers and in their presence, nothing was seized by the police personnel. Moreover, the alleged seizure and recovery of contraband articles and arrest made by the de-facto complainant (PW4) was not informed to the superior officer in writing within 72 hrs. and, therefore, the provision of law was not adhered to.
5. It is further said by the learned Advocate that the persons who were cited as witnesses to the seizure were held from different locality. The attention of this Court is drawn by the learned Advocate that the provision of Section 50 of the NDPS Act was not complied with and no notice of search was given when the accused person expressed his willingness to be searched by a Gazetted Officer as it appears from the

evidence of PW3 and moreover the person who searched the accused, he himself was not searched and no legal procedure was followed as it appeared from the evidence of PW3 of this case. It is said by the learned Advocate that PW3 in his cross-examination has categorically stated that it is false to state that no notice under Section 50 of the NDPS Act was served to the accused and he was not present at the alleged spot on the alleged date and time. So, it is stated that the evidence of PW3 cannot be relied upon.

6. It is further said by the learned Advocate that same as to PW3, PW4 (de-facto complainant) has stated in his cross-examination that the witness did not even try to requisition the service of a Magistrate and it was admitted by this witness in cross-examination that it was not mentioned in the written complainant that he disclosed to the accused that he had a legal right to be searched in presence of a Gazetted Officer or in presence of a Magistrate. The attention of this Court is drawn to the deposition of PW7 wherein that witness stated that S.I. Ranjit Singha tried for requisitioning the service of a Magistrate but such Magistrate was not available which is contrary to the statement made by PW4. It is further said by the learned Advocate that the statement made by this witness in cross-examination that 14/15 other cases are also pending against the said accused, but no particulars of those cases were supplied by this PW7. So, it is submitted by the learned Advocate that Section 50 of the NDPS Act was not complied

with. Lastly, the learned Advocate invited the attention of this Court to the evidence of DW1 and DW2. DW1 is the accused himself and DW2 is his wife. It is said by the learned Advocate that DW2 has stated that the accused has been falsely implicated and picked up from his residence while he was taking meal. Whereas DW1 has stated that he has workshop of iron grill manufacturing in the name of 'Jaishree Maa Works' and he proved his income-tax file and according to him he was going to take meal at his residence and when he was taking his meal at that time police officer came to his house and asked him to report to the police station to which his wife (DW2) objected and then DW1 was asked to sign on a paper. So, as per submission of the learned Advocate that it would be apparent that this accused person has been falsely implicated and picked up from his residence by the police personnel. So, it is said that the impugned judgment and order of conviction passed by the learned Trial Court may be set aside.

- 7.** Mr. Arindam Sen, learned Advocate for the State said that the provision of Section 50 N.D.P.S. Act is not needed to comply with in case like this, where there was search and seizure of 'ganja' from the polythene packet held in the right hand of the accused. As per submission of the learned Advocate that there is no question of giving option to the accused or search of the persons or the police persons in view of the fact the 'ganja' was seized from the polythene packet held in the right hand of the accused. It is said by the learned Advocate that the

requirement of Section 50 of the N.D.P.S. Act that the person to be searched and informed of his right to be searched before a Gazetted Officer or Magistrate is mandatory only in the context of a person. The search of the person of the accused is distinguishable from search of his premises, vehicle, bag etc. If the contraband is recovered from any or container being carried by the accused, Section 50 of the N.D.P.S. Act may not be attracted.

8. To buttress his submission learned Advocate relied upon a decision rendered by the Hon'ble Apex Court in the case of **State of Punjab-vs-Baldev Singh**¹. It is said by the learned Advocate that the said report as indicated above has been consistently followed by the Courts in India and has clarified the scope and applicability of Section 50 of the N.D.P.S. Act. In the case at hand non-compliance of Section 50 of the N.D.P.S. Act may not vitiate the entire trial as Section 50 of the N.D.P.S. Act applied to personal searches or individual requirements informing the suspect of their right to be searched before a Gazetted Officer or Magistrate. It is said by the learned Advocate that in view of the decision rendered by the Apex Court stated above compliance with the Section is crucial to ensure the admissibility of evidence in trial and non-compliance can render the search illegal and the recovery of contraband articles under suspicion.

¹ (1999) 6 SCC 172

9. The learned Advocate for the State draws attention of this Court to the depositions of PW6, PW9, PW7 and PW10. It is further said by the learned Advocate that all the witnesses supported the statement made by the PW4 and supported the contention made in the written complaint. As per submission of the learned Advocate that there is nothing material in the record for which the impugned judgment and order passed by the learned Trial Court may be interfered with.
10. I have considered the rival submissions advanced by both the parties and have gone through the other materials on record.
11. It is fact that contraband viz. 1 kg. 500 gms of 'ganja' was found concealed in a polythene packet held in the right hand of the accused and recovered from the said bag. Suffice it to say that the Trial Court, after appreciating the evidence consisting of the oral testimonies of the witnesses, documentary evidence, as well as seized articles marked as exhibits in this case, arrived at the conclusion that since the recovery was effected from the bag which was in possession of the appellant herein. Based on the said conclusion and the careful appreciation of the evidence, the Trial Court held that the prosecution had succeeded improving the guilt against the appellant and convicted him under Section 20(b)(ii)B of the N.D.P.S. Act and sentenced him to undergo rigorous imprisonment for one year along with fine.

- 12.** In **Rajan Kumar Chadha –vs- State of Himachal Pradesh**² the Apex Court held, inter alia, that:

“For all the foregoing reasons, we are of the view that the igh Court was justified in holding the appellant guilty of the offence under the NDPS Act and at the same time, the High Court was also correct in saying that Section 50 of the NDPS Act was not required to be complied with as the recovery was from the bag.”

In the aforesaid report the Supreme Court reiterated that the conditions for personal search as specified in Section 50 of the Narcotic Drugs and Psychotropic Substances Act are applicable only for the search of the physical body of the person and not for the search of any bag carried by the person.

- 13.** At the same time, the Apex Court acknowledged that confining the applicability of Section 50 NDPS Act only to the physical body and excluding a bag carried by a person can defeat the purpose of the provision, which is to provide a safeguard against abuse of powers by the investigating agency during a search operation. The judgment made extensive reference to various precedents which laid down different interpretations of Section 50. One strand of decisions took a strict view to hold that the provision is applicable only to the search of the person. However, Section 50 be complied with even while conducting a search

² **2023 SCC OnLine SC 1262**

of anything that is inextricably linked to the accused. As a result, a bag which was being carried by the accused was considered to be inextricably linked to the accused, and therefore, any recovery of a contraband from such a bag cannot be said to be illegal.

14. In the said report, it is clarified that when the term 'search' is used in the context of a person, it specifically refers to the search of the individual's body or clothing. In such cases, the procedure outlined in Section 50 of the NDPS Act must be adhered to. On the other hand, if the search pertains to a building, vehicle, or location, including a public place, there is no requirement to follow the procedure under Section 50. The Apex Court also highlighted that Section 50 of the NDPS Act pertains to search of the person and does not cover a bag being carried by the accused. Since the accused's body was not searched, Section 50 was deemed inapplicable in that situation. The Apex Court observed that a bag, briefcase or any other similar article or container cannot be considered part of a human being's body under any circumstances. These items are distinct and identifiable as separate from the human body. The Apex Court concluded that the High Court was justified in finding the appellant guilty of the offence under Section 50 of the NDPS Act. In this case the recovery was from the bag and not from the appellant's body.
15. In view of the decision rendered by the Apex Court in **Rajan Kumar Chadha (supra)** the requirement of compliance with Section 50 of the

NDPS ACT was no more resintegra and the Apex Court in unambiguous term held that if the recovery was not from the person and whereas from a bag carried by him, the procedure formalities prescribed under Section 50 of the NDPS Act was not required to be complied with. It is to be noted that in the case on hand also the evidence indisputably established that the recovery of the contraband was from the bag which was being carried by the accused. It was observed by the Apex Court that in the said circumstances and in the light of the law laid down by the Apex Court in Rajan Kumar Chadha (supra), it can only be held that the understanding of the law by the High Court on the said issue of requirement to comply with Section 50 of the NDPS Act is contrary to the law laid down by the Apex Court.

16. The Apex Court in earlier decision made in the case of **Baldev Singh (supra)** held that Section 50 of the NDPS Act applies to personnel search of an individual and not to search of a bag, container being carried by them and if the contraband is recovered from a bag or container being carried by the accused, Section 50 of the NDPS Act may not be attracted.
17. Learned Advocate for the appellant has pointed out that the witnesses have not corroborated the search and seizure of 1.500 Kg ganja from the accused on the alleged date of incident and they have deposed in the same tone. It is stated by the witnesses during cross-examination that they do not know why they have signed on the blank paper. So,

the factum of seizure made by the prosecution cannot be believable. The signature of both these witnesses i.e. PW1 and PW2 on the seizure list was proved as exhibits in this case. It is trite law that mere fact that the independent witnesses did not support the prosecution cannot be a ground to discard the seizure and particularly when the seizure is proved through the consistent and reliable testimony of police officials. The evidences of official witnesses cannot be distrusted and disbelieved merely on account of their official status. In this case, evidence of PW4 gets corroboration from the evidences of PW3, S.I. Subhrajit Mazumder, PW5, C/3571, Ashim Kumar Dandapat, PW7, S.I. Shyamal Kumar Dutta, PW10, C/221, Shyam Sundar Guin and PW12, Nirmal Kumar Josh (I.O. of this case).

- 18.** PW9, Dr. Utpal Saha has stated in his evidence that their laboratory received a sealed envelope packet from O/C, Howrah P.S. in connection with Howrah P.S. Case No. 132/05 where the seals were found intact. This witness has said that on analysis it was revealed that the sample contained Ganja.
- 19.** The accused himself was adduced as DW1 who stated that he is a responsible person of a society and he has workshop of iron grill and some income-tax returns were filed which were marked as exhibits on behalf of them for showing that he could not be involved in any such offence like this. DW2, the wife of the accused also stated in the same voice of her husband that the entire case of the prosecution is totally

false and the accused has been falsely implicated in connection with this case.

- 20.** So far as the contentions on merit of the case raised in appeal is concerned, I am of the opinion that the learned Trial Court has not committed any error in appreciation of evidences available on record. Further, it is found that the Trial Court considered the evidence available on record and correctly found that the case is prosecuted as well supported by the witnesses and documentary testimony. The procedure was well followed by the prosecution and the witnesses of the prosecution have profoundly supported the prosecution case. The Trial Court has well considered the material available on record; hence, no infirmity is found in the impugned judgment and order of conviction passed by the learned Trial Court, accordingly, the same is upheld.
- 21.** In so far as the sentences is concerned the learned Trial Court is sentenced the convict to undergo rigorous imprisonment for one year and to pay a fine of Rs. 10,000/- and in default of payment of fine he was ordered to undergo rigorous imprisonment for further six months.
- 22.** The facts indicated that incident pertains to twenty years ago. The question that thus arises for consideration is as to whether it would be appropriate to direct the appellant to undergo the rest of the sentence. There is no over-emphasising the fact that speedy trial which is the essence of justice has been lost.

- 23.** The sword of justice should not become a punishment of delay. Obviously, procedure prescribed by law for depriving a person of his liberty cannot be reasonable, fair and just unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as reasonable, fair or just and it would fall foul of Article 21 of the Constitution. There can, therefore, be no doubt that speedy trial is an integral part of the fundamental right to life and liberty enshrined in Article 21. Therefore, long delay before the Courts in taking a final decision in regard to the guilt or otherwise of the accused is one of the mitigating factors for the superior Courts to take into consideration while taking a decision on the quantum of sentence.
- 24.** Given the fact that the trial and appeal proceedings have in the case at hand continued for nearly 20 years by now causing immense trauma, mental incarnation and anguish to the appellant has already suffered. When I examined the facts and the case at hand, I find that the incident is of the year 2005 and during the period of bail granted by this Court, there is no such report that the appellant breached any condition of the bail granted to him or indulged in any criminal activities. That apart the appellant has suffered the ordeal of criminal case since 2005. Therefore, the accused found guilty of an offence under a protracted trial process is entitled to a lenient sentence on the ground of delay.

- 25.** The aforesaid reasons which, in my view, are the special reasons and accordingly alter the jail sentence imposed on the appellant will be reduced to what is already undergone by the appellant. In other words, this Court alters the jail sentence of the appellant and award him “what is undergone by him” and at the same time enhances the fine amount of Rs. 10,000/- to Rs. 20,000/- to meet the ends of justice.
- 26.** The appellant is, therefore, now not required to undergo any more jail sentence. However, in case he fails to deposit the fine amount of Rs. 10,000/- after adjusting the sum of Rs. 10,000/-, if already paid by the appellant, he will have to undergo simple imprisonment for a period of one month.
- 27.** If the appellant deposits the fine amount as indicated above within three months from today, he will not be required to undergo any default jail sentence. If he has already paid Rs. 10000/- then he will only to deposit Rs. 10,000/-.
- 28.** In view of the foregoing discussions, the appeal succeeds and is partly allowed. The impugned judgment and order passed by the learned Trial Court is modified to extent indicated above. The judgment of the learned Trial Court regarding disposal of the seized property stands affirmed.
- 29.** Let a copy of this order along with T.C.R. be sent down to the Trial Court immediately for compliance.

- 30.** Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)