

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

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

***C.R.A. (DB) 214 of 2024
(CRAN 2 of 2024)***

Safikul Islam Sk.

-Vs-

The State of West Bengal

For the Appellant : Mr. Arnab Chatterjee, Adv.
Ms. Dhanasree Biswas, Adv.
Ms. Poulami Bose, Adv.

For the State : Mr. Ranadeb Sengupta, Adv.
Ms. Suchismita Dutta, Adv.

Heard on : 11.02.2025

Judgment on : 11.02.2025

Joymalya Bagchi, J. :-

1. Appeal is directed against judgment and order dated 28.02.2024 passed by the learned Judge, Special Court under the NDPS Act, Nadia at Krishnagar in NDPS Case No.21 of 2020 convicting the appellant for commission of offence punishable under Section 21(c) of the NDPS Act and sentencing him to suffer rigorous imprisonment for fourteen years

and to pay a fine of Rs.1,00,000/-, in default, to suffer simple imprisonment for one year more.

Prosecution case:-

2. Prosecution case as levelled against the appellant is as follows :

On 03.03.2020 at around 11.45 hrs, SI Samir Ghosh, Narcotics Cell, CID, West Bengal (PW 5) received credible information that a gang of criminals of Jalangi, Murshidabad had stored huge quantity of *codeine phosphate* in a clandestine manner in order to sell them for wrongful gain and that the criminals would be delivering a consignment of the said items on 04.03.2020 at the border area of Karimpur Police Station. Prior information was diarised (Exhbt.2) and communicated to superior officer i.e. Special Superintendent of Police (Operation), CID, West Bengal. After receiving permission to work out the information, PW 5 along with ASI Sudipta Debnath (PW 1,) constable Imtiaz Ahmed (PW 2) and ASI Sanku Das (PW 9) proceeded to the spot near Bakshipur ghat. They intercepted a silver coloured Maruti van bearing registration No. WB-58AP-9567 coming from Domkal, Murshidabad side. The vehicle tried to escape but failed. Two persons were found inside the vehicle. The driver disclosed his identity as Shyamal Sarkar and his companion was Safikul Islam Sk. i.e. the appellant. Notices under Section 50 of the NDPS Act were served upon them. Thereafter, a gazetted officer namely Inspector Sandip Kumar Ganguli, Officer-in-charge, Narcotic Cell, CID, West Bengal (PW 8) was summoned to the spot. In his presence search commenced. Upon search,

three blue coloured mineral water jar having smell of *codeine phosphate* were found inside the car. The said consignment was seized in presence of independent witnesses.

3. Appellant and Shyamal Sarkar were arrested. On the written complaint of PW 5, FIR was registered against them as well as one Rana Sk., Baitul Khan and the registered owner of the said vehicle resulting in registration of Karimpur Police Station Case No.53 of 2020 dated 05.03.2020 under Sections 21(c)/25/29 of the NDPS Act.

4. In course of investigation, the seized consignment was inventorised and duly certified by Magistrate under Section 52A of the NDPS Act. Chemical examiner's report (Exhbt.12) recorded the samples tested positive to *codeine phosphate*. Charge sheet and supplementary charge sheets were filed against the appellant and one Shyamal Sarkar. Shyamal Sarkar died and charge was framed under Section 21(c) of the NDPS Act against the appellant. Appellant pleaded not guilty and claimed to be tried. In course of trial, prosecution examined nine witnesses and exhibited a number of documents. Defence of the appellant was one of innocence and false implication.

5. In conclusion of trial, learned trial Judge by impugned judgment and order dated 28.02.2024 convicted and sentenced the appellant, as aforesaid.

Arguments at the Bar:-

6. Mr. Arnab Chatterjee for the appellant contends recovery has not been supported by independent witnesses. They did not identify the

appellant and claimed they had signed on blank documents. He further submits the inventory was prepared by Investigating Officer (PW 7) and not the Officer-in-charge of the police station. *Malkhana* register had not been produced and possibility of substitution cannot be ruled out. Accordingly, he prays for acquittal.

7. On the other hand, Mr. Ranadeb Sengupta for the State opposes the prayer for acquittal.

Evidence on record:-

8. PW 5 (SI Samir Ghosh) is the leader of the raiding party. He deposed he had received prior information with regard to transportation of narcotics. He reduced the information into writing (Exhbt.2) and the said information was sent to a superior officer. Pursuant to permission, he formed a team and proceeded to the spot. He was informed by source that a Maruti van bearing registration No.WB58AT-9567 would come to Bakshipur ghat. He went to Karimpur Police Station and sought police assistance. Then their team proceeded to Bakshipur ghat. The team noticed the vehicle and chased it. They intercepted the vehicle and found two persons sitting inside the vehicle. They disclosed their names as Shyamal Sarkar and Safikul Islam Sk. i.e. the appellant. They were served notices under Section 50 of the NDPS Act (Exhbts.4 and 5). Gazetted Officer i.e. Inspector Sandip Kumar Ganguli was requested to come to the spot. In presence of the Gazetted officer, three blue coloured jars containing liquid suspected to be *codeine phosphate* weighing 53 kgs.

500 gms. was seized. They took two samples from each jar, one test sample and one control sample. Entire consignment was seized. He proved the seizure list. He arrested the appellant and Shyamal Sarkar. He lodged written complaint (Exhbt.7). He informed his superior officer about the search and seizure and arrest through mail. He proved the electronic mail (Exhbt.8). He exhibited the GD entries (Exhbt.9) collectively.

9. PW 5's evidence is corroborated by members of the raiding party viz. PWs.1, 2 and 9.

10. PW 1 (ASI Sudipta Debnath) deposed he prepared the seizure list and signed on it.

11. PW 9 (ASI Sanku Das) also proved his signature on the seizure list.

12. PW 8 (Inspector Sandip Kumar Ganguli) is the Gazetted Officer. He deposed at 18.45 hrs. he received phone call from PW 5 who requested him to come to the spot for witnessing search and seizure. He arrived at the spot. A Maruti vehicle bearing registration No. WB58AP-6567 had been intercepted. Two persons were sitting inside the vehicle. Three blue coloured water jars containing liquid weighing 18.200 kgs., 17.500 kgs. and 17.200 kgs. were recovered. As per Drug Detection Kit, they tested positive to *codeine phosphate*. Samples were drawn from each jar. He signed on the seizure list.

13. PW 3 (Ershad Sk.) and PW 4 (Asraful Sk.) are independent witnesses. They admitted their signatures on the seizure list but could

not identify the accused. They stated they signed on the seizure list as per instruction of police.

14. PW 6 (SI Anup Halder) was the Officer-in-charge of the police station. He entrusted the investigation to PW 7.

15. PW 7 (Inspector Jagannath Naskar) took up the investigation. He prepared rough sketch map with index. He examined witnesses. He took steps for making inventory. He collected the inventory report. He proved the inventory report (Exhbt.11) which was countersigned by Magistrate. The photographs of the inventory as well as the compact disc of the inventory were exhibited as Mat. Exhibits 1 and 2 respectively. He collected chemical examiner's report and submitted charge sheet.

Analysis and findings:-

16. PW 8, the Gazetted Officer was present at the time of recovery. Recovery was made under the auspices of a Gazetted Officer under Section 41(2) of the NDPS Act and not Section 42 of the NDPS Act. (See *Sekhar Suman Verma vs. Superintendent of Narcotics Control Bureau & Anr.*¹; *State of Haryana vs. Jarnail Singh & Ors.*²; *M Prabhulal vs. Asst. Director, Directorate of Revenue Intelligence*³.)

17. With prejudice to the aforesaid, evidence on record proves compliance of Section 42 NDPS Act.

18. PW 5 is the leader of the raiding party. He deposed he received prior information (Exhbt.2) with regard to transportation of narcotics. He

¹ (2016) 11 SCC 368

² (2004) 5 SCC 188 [Para 10]

³ (2003) 8 SCC 449

forwarded the information to a superior officer and pursuant to permission proceeded to hold the raid. The aforesaid oral evidence as well as documentary evidence unequivocally proves the prior information was dispatched to the superior officer and pursuant to his permission the raid had been conducted in compliance of Section 42(1) of the NDPS Act.

19. Subsequent to the recovery, PW 5 deposed the intimation had been sent to the superior officer with regard to the said recovery (Exhbt.8). This is in compliance with Section 42(2) read with Section 57 of the NDPS Act.

20. Mr. Chatterjee strenuously argues the inventory and certification have not been made as per law. Investigating Officer (PW 7) prepared the inventory in place of the Officer-in-charge of the police station.

21. Section 52A sub-section (2) of the NDPS Act, inter alia, provides when narcotic drug has been seized and forwarded to the Officer-in-charge of the police station or to the officer empowered under Section 53, the officer referred to in sub-section (1) shall prepare an inventory of the said drugs.

22. Sub-section (1) of Section 52A states having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration in respect of narcotic drugs and psychotropic substances, controlled substances or conveyance, Government by notification in Official Gazette specify the drugs which shall be disposed of by such officer and in such manner as the said Government may determine.

23. In the present case, the seizure had been reported to the Officer-in-charge, Karimpur Police Station. Pursuant to his direction PW 7 had taken over investigation. Nothing is placed on record to show PW 7 was not empowered to investigate the case or exercise powers under Section 52A sub-section (2) of the NDPS Act.

24. Given this situation, preparation of inventory by the Investigating Officer (PW 7) who had been entrusted to investigate the case by the Officer-in-charge concerned cannot be said to be illegal or without authority of law. Exhibit 11 bears the certification of the Magistrate concerned which has been admitted without objection. The documentary evidence is supplemented by the photographs as well as the electronic evidence i.e. the compact disc with regard to inventory.

25. In light of the aforesaid clinching and unimpeachable evidence with regard to the inventorisation and certification of the seized consignment, failure to produce the *Malkhana* register cannot be a ground to come to a conclusion that there is a snap in the chain of custody of the seized consignment.

26. Though the samples had been drawn from the spot and not during inventory, authenticity of the samples had not been challenged during cross-examination. Chemical examiner's report shows the seals of the sample were intact and matched with the seals sent to the examiner.

27. Accordingly, I am of the opinion the chain of custody of the samples drawn from the consignment and those examined by the

examiner is fully established. Chemical examiner's report shows presence of *codeine phosphate* in the samples (Exhbt.12).

Conclusion:-

28. In light of the aforesaid discussion, I am of the opinion recovery of 53.500 kgs. of *codeine phosphate* from the vehicle which was occupied by the appellant and co-accused viz. Shyamal Sarkar has been proved beyond reasonable doubt. Appellant has failed to rebut the presumption under Section 54 of the NDPS Act and the conviction against him has been rightly recorded.

29. Accordingly, conviction of the appellant is upheld.

30. Coming to the issue of sentence, I note the appellant is neither the consignee of the seized articles nor the owner of the vehicle used to carry the narcotics. He appears to be a mere carrier accompanying the vehicle which was used to transport the consignment. Appellant does not have criminal antecedents.

31. In light of the aforesaid facts, I am of the view some concession may be made on the score of sentence.

32. Accordingly, the sentence imposed upon the appellant is modified and he is directed to undergo rigorous imprisonment for twelve years and to pay a fine of Rs.1,00,000/-, in default, to suffer simple imprisonment for one year more.

33. Appeal is allowed to the aforesaid extent.

34. In view of disposal of the appeal, connected application being CRAN 2 of 2024 is also disposed of.

35. Period of detention suffered by the appellant during investigation, enquiry and trial shall be set off against the substantive sentence imposed upon them in terms of Section 468 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

36. Trial court records along with a copy of this judgment be sent down at once to the learned trial Court for necessary action.

37. Photostat certified copy of this judgment, if applied for, be given to the parties on priority basis on compliance of all formalities.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

akd/as