

Form No. J(1)

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

Present :

**The Hon'ble Justice Rajasekhar Mantha
And
The Hon'ble Justice Rai Chattopadhyay**

C.R.A. 270 of 2017
With
I.A. No. CRAN 1 of 2017 (Old CRAN 3959 of 2017)

Md. Nasim
– Vs. –
The State of West Bengal

For the Appellants: Mr. Imdadul Hoque.

For the State: Dr. Pradip Banerjee.

Heard on: June 23, 2026.

Judgment on: June 23, 2026.

Rajasekhar Mantha, J.:

1. The instant appeal is directed against the judgment of conviction dated 28th March, 2017 and order of sentence dated 29th March, 2017 passed by the learned Additional Sessions Judge, 12th Court, South 24 Parganas at Alipore in Sessions Trial No. 01(12)2013 arising out of the Sessions Case No. 06(09)2013.

2. The appellant was convicted for 15 years Rigorous Imprisonment and fine of Rs.1,50,000/- under Section 20 (b)(ii)(C) of the Narcotic Drugs and Psychotropic Substance Act,

1985. In default of payment of fine, he was to undergo two further years of detention.

THE PROSECUTION CASE:

3. The facts relevant to the case are that one Ashadur Rahaman, S.I. of Narcotic Cell of Detective Department, Kolkata Police received information from a credible source that on 12th March, 2013 a male drug supplier was to come in the vicinity of Diamond Harbour Road and Mayurbhanj Road, carrying a huge quantity of Cannabis locally known as Charas. The said Ashadur Rahaman formed a raiding team comprising of himself, S.I. P. K. Das, S.I. S, Mondal and A.S.I Susanta Mishra and obtained prior permission of the Assistant Commissioner of Police, Narcotic Cell, Detective Department, Lal Bazar and set out for raiding.

4. After waiting for more than an hour, the appellant was coming on the footpath of western side of Diamond Harbour Road and was intercepted in front of a shop called "Sohana Stores". The interception occurred in front of Municipal Premises No. 56/1, Diamond Harbour Road, Kolkata – 700 027 near the crossing of Mayurbhanj Road. A crowd of persons gathered locally. The appellant was offered to be searched either by a Gazetted Officer or before a Magistrate to which the appellant stated that he wanted to be searched by a Gazetted Officer. Finding no Gazetted Officer available at the nearby

place, Ashadur Rahaman (PW-2) called one Nirmal Kumar Ghosh (PW-3). Nirmal Kumar Ghosh first searched Ashadur Rahaman and found no Narcotic on his body. The appellant was thereafter searched 7 kilograms of Charas was recovered from inside his Ruck Sack that he was carrying on himself. Some quantity of Charas was also recovered from the pocket of the appellant. Two persons, namely, Janak Upadhaya and Sukdev Ghosh, who are the passers-by, agreed to act as independent witnesses. After search and seizure and recovery of Narcotic substance about 200 grams were taken out of the recovered substance for sampling and testing. The same were sent to Doctor Tapan Kumar Das (PW-1).

5. After arrest, investigation was initially handed over to S.I. Haranath Mukherjee (PW-4). Investigation was later handed over to S.I. Amit Kumar Chatterjee (PW-6). A formal suo motu complaint was registered by Ashadur Rahaman on 12th March, 2013 based on which G.D. Entry No. 1697 was made in Ekbalpur Police Station. Formal FIR was written by S.I. Haranath Mukherjee. After investigation was completed charge-sheet was filed. Charges against the appellant were framed by the Trial Court on 3rd December, 2013 under Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substance Act, 1985.

THE TRIAL AND EVIDENCE ON RECORD:

6. **PW-1** was Dr. Tapan Kumar Das. He identified the sample of 200 grams of Charas that was marked as Exhibit-B and confirmed his signature on the label thereof. He reported that Narcotic substance was in fact Cannabis or Charas. He confirmed having delivered a report. He identified his signature and seal on the Chemical Examination Report that was marked as Exhibit-1. He further identified another white envelope containing other samples and remnants that were also sent for analyst. The envelope contained Charas as per his report. Envelope was marked as Mat. Exhibit-1. His examination could not be shaken seriously in cross-examination.

7. **PW-2**, was Ashadur Rahaman, S.I. of Anti-Narcotic cell, Detective Department, Lal Bazar, who conducted the raid. He confirmed that he took the prior permission of the Assistant Commissioner, Anti-Narcotic cell, one Mr. Dipak Dutta. He narrated the entire prosecution case as stated hereinabove. He confirmed that the accused was given to two options either to be searched by a Gazetted Officer or in presence of a Magistrate. The appellant chosen Gazetted Officer whereupon PW-2, Ashadur Rahaman called PW-3, Nirmal Kumar Ghosh, Additional Officer-in-charge of Ekbalpur Police Station, to act as a Gazetted Officer. He confirmed that he was searched by the Gazetted Officer first and no Narcotic substance was found on

his body. The appellant was thereafter searched and seven kilograms of Charas was recovered from his Ruck Sack and some quantity of Charas was recovered from his pocket. A seizure list was prepared that was marked as Exhibit-5. The same was witnessed by two independent persons, namely, Janak Upadhyay (PW-5) and one Sukdev Ghosh. The appellant was arrested under arrest memo, which is marked as Exhibit-7. FIR written by PW-4 was marked as Exhibit-8. Inventory list was marked as Exhibit-9. A black coloured Ruck Sack bag and the sample of Charas were marked as Exhibit-2/1 and Exhibit-1 respectively. The signature on the seal of the material Exhibits were identified by PW-2. He also arrested the appellant.

8. **PW-3**, was Nirmal Kumar Ghosh. He was the Additional Officer-in-charge, Gazetted Officer before whom the appellant was searched and seizure was effected. He identified the Narcotic substance the packet containing Narcotic Substance and the levels therein and his signature of other witnesses. He also identified the Ruck Sack and the label parted thereon and also the seizure list of all articles seized from the person of the appellant.

9. **PW-4**, was the first Investigating Officer, S.I. Haranath Mukherjee. He confirmed the arrest of the appellant at 56/1, Diamond Harbour Road, Kolkata – 700 027. He took up the investigation and charge of the appellant and detained him in

custody. He further identified the G.D. Entry and confirmed that he wrote a formal FIR. He confirmed both the G.D. Entry and the FIR in Court.

10. **PW-5**, was Janak Upadhyay, was an independent witness to the search, seizure and arrest. He deposed that he was passing by the area where he found a number of people having gathered. He identified having seen Ashadur Rahaman and Nirmal Kumar Ghosh. He identified his signature on the seizure list and the arrest Memo. He also identified the signature of the second witness, Sukdev Ghosh, who was being not examined by Prosecution.

11. **PW-6**, was S.I. Amit Kumar Chatterjee, the second Investigating Officer appointed in place and stead of the first Investigating Officer PW-3. He confirmed the Malkhana entries of the seized contraband articles and all seized alamats. He took up the investigation and identified the accused in Court. He identified all the seized exhibits and seizure list and the signature of Haranath Mukherjee, the first Investigating Officer. He confirmed his signature on the G.D. Entry No.1697 of Ekbalpur Police Station on 12th March, 2023. He identified the Ruck Sack and the seized Narcotic.

12. The appellant was thereafter examined under Section 313 of the Code of Criminal Procedure. Prior thereto, the appellant had deposed that he has a handler, one Sultan and that he was

working with two other associates. The appellant was duly confronted with all circumstances in the evidence that emerged against him.

13. Learned Counsel appearing on behalf of the appellant would argue firstly that no seizure list was prepared of the search conducted on Ashadur Rahaman by Nirmal Kumar Ghosh (PW-3).

14. This Court notices that when nothing objectionable is recovered from the body of the Raiding Officer and a deposition to that extent is available from the evidence of the witnesses, non-preparation of the nil seizure list is not fatal to a prosecution under the Narcotic Drugs and Psychotropic Substances Act, 1985.

15. It is next argued that there were sufficient Gazetted Officers available in the vicinity from the place of arrest of the appellant till Ekbalpur Police Station.

16. This Court notes that since case was registered at the Ekbalpur Police Station itself, and the raid originated at the Ekbalpur Police Station, the calling of PW-3, an Officer of the said Police Station to act as Gazetted Officer, on the option exercised by the appellant, would not by itself dilute the prosecution case.

17. It is difficult for a raiding party to locate and search for a Gazetted Officer and the available Gazetted Officer being

contracted to function as such for the purpose of conducting the search and seizure on the appellant, cannot be faulted in these facts and circumstances of the case.

18. The last argument advanced by the learned Counsel for the appellant is that nobody from Sohana Stores was brought in as witness to the search and seizure or brought to depose in trial. This, according to the appellant, could have established the prosecution case beyond any reasonable doubt.

19. This Court notes that there were two independent witnesses, to the search and seizure namely, PW-5 and the said Sukdev Ghosh, who was passing by the place, were nowhere connected with the incident or the police.

20. In the backdrop of the above, while it could have been desirable that someone from Sohana Stores ought to have deposed in evidence on behalf of the prosecution, the absence of such person is not fatal to the prosecution case. The evidence on record clearly established that the appellant was carrying about 7 kilograms of Charas/Cannabis and the chemical analyst report was confirmed the said Narcotic substance. The weight of the substance and the appellant carrying the same on his body in a Ruck Sack proves the prosecution case beyond reasonable doubt. The appellant has not denied carrying the Ruck Sack on his body.

21. Having regard to the above, this Court finds no reason to interfere with the impugned judgment of conviction and sentencing of the appellant. If the appellant is entitled to any remission, he may apply before the Superintendent of concerned Correctional Home and State may take appropriate steps in this regard.

22. C.R.A. 270 of 2017 shall stand dismissed.

23. In view of dismissal of the appeal itself, the connected application being CRAN 1 of 2017 shall also stand dismissed.

24. The trial court records along with a copy of this judgement be sent down at once to the learned trial court for necessary action.

25. Urgent photostat certified copy of this order, if applied for, be supplied to the parties as early as possible.

(Rajasekhar Mantha, J.)

I agree.

(Rai Chattopadhyay, J.)