District : South 24 – Parganas.

In the Court of the Learned 4th Additional District

& Sessions Judge at Alipore.

**S.T. 1 (9) 2021**

***STATE***

=Versus =

1. ***AKHIL ROY***
2. **ASHOK DUTTA**
3. **DEBASISH MAZUMDER @ DEBA**

***Under Section – 21(c)/29 of NDPS Act.***

….. **Accused Persons**

**WRITTEN ARGUMENT ON BEHALF OF THE PROSECUTION**

That brief fact of the case is S.I. Manzoor Alam Molla, Officer of Narcotic Cell, D/D, Lal Bazar received an information from credible source on 22nd September, 2020 at about 10.00 hours that some Heroin Suppliers of Bongaon Area were about to deliver a Consignment of Heroin in the vicinity of Kalikapur Road under Garfa Police Station area in the afternoon.

Accordingly S.I. – Manzoor Alam Molla this information was reduced to writing and was forwarded to his Superior Officer O.C. Narcotic Cell D/D, Lal Bazar and a Raiding Team was formed and took permission from A.C. Narcotic Cell, D/D Lal Bazar at about 10.30 hrs to conduct a raid in the afternoon. On that date at about 12.00 Hrs they left Lal Bazar, with Raiding Team Members A.S.I. Sukanta Mishra, A.S.I. Shibu Burman Constable Rajib Chakraborty and Constable Tamal Mukherjee along with packing materials, weighing Scale D.C. D.D. brass seal and other accessories.

At about 13.00 hrs they reached in front of Frank Ross Pharmacy on Kalikapur Road under Garfa Police Station and search led their to the spot and they maintained watch there. At about 13.40 hrs source pointed out one Maruti Suzuki four wheeler vehicle with blue colour coming from East to West direction along Kalikapur Road. The Officers detained the vehicle in front of the shop M/S Frank Ross Pharmacy at 84, Kalikapur Road under Garfa Police Station and they notice one person was driving the vehicle while two other persons were sitting inside. The vehicle having Registered No. W.B-02AC/1576 Maruti Dzire Vehicle, Meanwhile small crowd gathered there to whom S.I. Manzur Alam Molla disclosed his identity as well as the purpose of such raid, on his request two persons namely Sunil Shaw and Khokon Mondal are voluntarily came forward to become witness to the search and seizure.

S.I. Manzur Alam Molla interrogated two persons sitting on the rear seat of the vehicle and they disclosed their identity No.1. Akhil Roy and detainee No. 2 Ashok Dutta and Another detainee disclosed his name Debasish Mazumdar @ Deba who is sitting on the driver seat.

Thereafter S.I. Manzur Alam Molla then in front of the two independent witnesses he asked all the three detainees that it is their legal right to be searched them either in person of a Learned Magistrate or in front of a Gazetted Officer, all of them were opted to search their in person on spot of a Gazetted Officer in this regard S.I. Manzur Alam Molla served three separate written option to them whether they were agreed to search by a nearest Magistrate or Gazetted Officer on spot. As all of them were agreed to be searched in persons of a Gazetted Officer by their version written acceptance of 1st option one Inspector reach there in uniform and on official vehicle and introduced himself Inspector Sukhendu Chatterjee. Addl O.C. Garfa Police Station S.I. Manzur Alam Molla introduced him to the detaineers and appraised about the fact and incident happened so far.

Then Inspector Sukhendu Chatterjee stated to all the detaineers that he is a Gazetted Officer by rank and also reconfirmed whether the detaineers agreed to be searched regarding their person and the vehicle on the spot in presence of the Gazetted Officer or not. Then the Inspector Sukhendu Chatterjee individually served written separated option to all three detaineers and the detaineers agreed to that and further desired to search the Police Personnel but no substance like contraband were found.

Thereafter as instruction S.I. Manzur Alam Molla started to search the detaineers one by one and found one black colour hand bag in right hand of Akhil Roy the Officer took up the said bag and after opening the same found one heat sealed transparent polythene packet containing some brown colour powder and one Nokia Mobile Phone of Black colour and cash of Rs. 3,000/-. Thereafter Officer started to search the detainee No. 2, Ashok Dutta and found one heat sealed transparent Polythene Packet containing brown colour powder of the right side trouser pocket during further search found case of Rs. 200/- from his left side trouser pocket after he started to search the detainee No. 3 Debasish Mazumder @ Deba and found one heat sealed transparent Polythene Pocket containing same brown colour powder from his left side trouser pocket and also found one black colour leather purse from the back side pocket of his wearing trouser the purse contained cash of Rs. 3,000/- and one Registration Certificate against the vehicle bearing No. WB-02AC/1576 in the name of Debasish Mazumdar @ Deba. Thereafter S.I. Manzur Alam Molla took weight of the three packet and found 255 g.m. of Heroin recovered from Akhil Roy and next 50 gms of Heroin recovered from Ashok Dutta @ Kalu and next 50 gms of Heroin recovered from Debasish Mazumdar @ Deba total in 355 gms of Heroin from their joint possession as Commercial Quantity for a case was registered Under Section 21©/29 of NDPS Act, when the seized articles were tested with the help of Testing Kit on spot and found positive of Heroin for which they could not give any satisfactory explanation and all the detainess are no. 1) Akhil Roy No. 2) Ashok Duta and Detainee No. 3 Debasish Mazumder @ Debu were arrested on spot by the Officer of Narcotic Cell D/D Lal Bazar. The Seized items was send to the chemical Examination and after chemical Examination submit a report by his chemical. Exert showing the item is positive in presence of Heroin and after completion investigation charge sheet was filed against all the accused persons and at the time of framing charge they plead not guilty to the said charge and claimed to be tried.

As many total PW-6 witnesses were examined by the Prosecution and after Cross-Examination by the defence in details and taken into New Alibye that they were falsely and forcible implicated by the Officer of Narcotic Cell D/D Lal Bazar. This Liabilities are gose to the defence to prove by documentary evidence.

At the outset it is to be pointed out that in total 355 gms of Heroin is recovered from their Joint Possession inside the vehicle and it was accordingly seized is to settle by various decision that given notice in terms of Sec. 50 NDPS Act was not attracted thought he has the legal right to be searched before the Gazetted Officer or Magistrate and they were accepted and exercise in option requirement of section 50 of NDPS Act has been found complied with PW-4 Inspector Sukhendu Chatterjee Add. O/C Garfa Police Station and PW-3 is the chemical Examiner who stated that in total 355 gms of Heroin is after physical and chemical examination and result of chemical Examination Report that all the seized articles are positive Heroin and he is also stated that all the Packet seals were intact and identified with specimen impression and PW-1 S.I. Manzur Alam Molla took the leading role and all the raiding team member after cross examination to proved and corroborated the result of the raid. That all the witnesses were narrated the entire incident and corroborated the evidence that the recovered Heroin in question from one black colour hand bag in right of Akhil Roy contained found one heat sealed transparent Polythene Pocket containing brown colour Powder in 255 gms of Heroin and One Nokia Mobile Pone of Black colour and cash of Rs. 3,000/- and recover from the Ashok Dutta found one heat sealed transparent polythene packet containing brown colour powder at the right side trouser pocket and cash of Rs. 200/- and recover from Debasish Mazumder @ Deba found one heat sealed transparent polythene packet containing brown colour powder from his left side trouser pocket of his wearing trouser and one purse contained case of Rs. 300/- and one registration Certificate against the vehicle bearing No.WB-02AC/1576 in the name of Debasish Mazumder @ Deba and further recover one driving license in the name of Debasish Mazumder @ Deba which was carried by all the accused through his vehicle they were proved the search and seizure on spot and proved entire proceeding of the search and seizure.

They also proved the given options registration was made for the appearance of the Gazetted Officer and independent Witnesses in their presence Search was made, when the Bus was searched no personal search has been done but the Seizing Officer. Those requirement of giving notice in terms of Sec. 50 of NDPS Act was not attracted. This witnesses proved how he sealed Packet and labeled the Seized Contraband. PW-5 is the another witness who was stated to register a case on the basis of the written complainant filed by the S.I. Manzur Alam Moll all the Seized articles and accused handed over to him and total 355 gms of Heroin was recovered from the three accused persons and formal F.I. R. recorded by this witness which was endorsed by the officer in charge of Garfa Police Station alamat were also produced which were kept by him of the Police Station Malkhana and handed over the Seized Alamat PW-4 is the Gazeted Officer whose requisition so that search would be made in his presence and the presence of this two public witnesses search was conducted by PW-1 Seizing Officer and recovered from three accused person in their joint possession total 355 gms of Heroin. And Seizure list was prepared and other articles were sealed packet and labeled as mark in his presence.

This Witnesses put his signature in the documents and PW-1 to PW-6 witnesses are corroborated their evidence which was proved by the prosecution.

This two Independent Witness no. 1 Sunil Shaw and No. 2 Khokon Mondal are duly summoned by the Prosecution and they are not Trundup to adduce for examination by prosecution witness due to one is out of station and another witness are not available in his respective address report is submitted by the prosecution not found and But both of the independent witness are circumstantial documentary corroborative witness their signature all the document seized alamat lables are proved that in this presence he entire search and seizure has been done and also packing sealing were also make at the time of search and seizure. This document also show that search and seizure was completed on particular date, time and places before the Gazetted Officer. In the regard Honourable Supreme Court reported Judgement 2013 CRL L.J. Page 4058 sited that conscious possession. Proof One possession of contraband material is recovered accused is established provision of Sec. 106 Evidence act get attracted Accused has to established how he came to be in possession of same as it is within his special . Knowledge and Para –C it is cleared that Non –Examination of Independent witness are not Fatal for prosecution case. Evidence of prosecution found to be cogent conviction and reliable. In our case no independent witness came to depose. Fact is that one witness Sunil Shaw is out of Kolkata and another independent witness Khokon Mondal is not found. In Rapheat Vs. Devender Singh (Intelligence Officer Director of Revenue Intelligence) reported in 2015 CRL. L.J. 3241 it has been held that merely because Panch witnesses could not be produced by the prosecution in the witness box account of their non-availability at the given address prosecution case cannot be thrown out “Similar Views was taken by the Honourable Supreme Court in the decision 2007 CRL . L.J. – 3414(S.C.) where it has been observed” in present case unfortunately apart from the evidence to ensure confidence in our mind that the search was conducted by PW-1 , S.I. Manzur Alam Molla as he was performed search and Seizure in presence of all the Witnesses. In the relied upon (2003) 8. SCC while observing that Prudence dictates that evidence of Police witnesses needs to be subjected to strict scrutiny. It was also observed that their evidence cannot be discarded merely on the ground that they belong to the Police Force and either interested in the Investigating or Particulars’ should be sought”. In the circumstances non citation of Independent witnesses cannot be said have been destroy the prosecution case.

PW-5 is the Investigating Officer who took up the Investigation the case as per direction of his superior Officer.

He provide that how he taken up the charge of Seized Alamat, case docket and accused person S.I. Soumen Dutta of Garfa Police station putting signature of the GD Book, Malkhana Register, Lock Up Register from concern Police Station and also on that day handed over the Investigation as per order of D.C. D/D Specil to the S.I Avik Das Narcotic Cell D/D Lal Bazar.

There is a clear evidence of chemical Examination –received the samples articles were intact when the samples was received by him and they were tailed with the samples impression of Seal which was identified and there is no contradiction that after physical and Chemical Examination result of the substance is “Heroin” admitted by the defence in his cross-examination.

All the documents and exhibits were proved by the prosecution, deposited in Malkahana Register was proved therefore prosecution in all respect produced the best evidence, beyond all reasonable doubt to established the prosecution case.

As many witnesses has been examined by the Prosecution and accused persons are also examined by Under Section 313 Cr.P.C. on their reply they did not claimed anywhere that they were forcibly arrested or falsely implicated. All the question Under Section 313 Cr.P.C. they are replied that “I am innocent” nothing else.

From the conjoint regarding under Section 35 to 54 of NDPS Act it is clear that if the accused is found to be in the possession of contraband articles, it is presumed and established to have been committed of an Offence under this of the NDPS Act until they were not contrary is proved.

It can also be held that once possession of the contraband material is established the accused has to liable that how came in his possession of the same as it is within their knowledge and for which accused persons not given any satisfactory explanation even at the time of his examination under Section 313 Cr.P.C. possession of contraband plea of implication – 2016 C.P.C. I page -154(S.C.) ruling huge quantity of puppy straw recovered from possession of the accused persons. Police Officials had not previous enmity with the accused persons. Accused in his statement U/S. 313 Cr.P.C. had not stated anything as to why would police foist false case against him, plea of false implication not tenable conviction of accused in proper.

There is no material contradiction in the evidence of the Prosecution Witnesses which an even raise a doubt in its all probability as the prosecution witnesses are consistent reliable and without any established contradiction when the evidence of Police Officer is found trustworthy conviction based on their evidence not liable to be set aside as per the decision of the Honourable Supreme Court, Kashmiralal Vs State of Hariyana reported in 2013 CR. L.J. Page – 3036 and in the another case Honorable supreme Court observed that nothing to show that evidence of Police witnesses was untrustworthily conviction on the basis of evidence of the Police Officer leading party members be faulted and observance of safe guard provided by Sec. 50 of the NDPS Act, required when seizure was made from the bag of the detainer as laid down in Ram Swaroop Vs. State of Delhi reported in 2013 CR.L.3, Page No. 2997 and Section – 42, 43 and 50 NDPS Act required writing down information regarding narcotics substance and reason for belief for such information before conducting of search and seizure section – 42 of NDPS Act. Applicable in case of conducting of search in Public Place Section – 43 of NDPS Act. In presence circumstances Section – 43 is applicable. On road and accused to be informed of his legal right on being search before the Magistrate or Gazetted Officer Under Section -50 of NDPS Act. Such right being applicable in case of search of a person of the accused and not in any bag or other articles carrying by the accused it was reported in latest judgement in 2018(4) CR.L.5 (SC) Page No. – 75.

Therefore in the citation of CRL. L.J. 2007, Page No. – 3414, section 50 and 42 of NDPS Act Search and Seizure, Independent Witness are corroborating the entire prosecution case. It has been opined by the Honourable Supreme Court in that when the arrest and seizure is made it the Bus Stand or any open place and not any building conveyance or enclosed place the case is covered by Section 43 of NDPS Act are applicable not u/s- 42 of NDPS Act. So in instant case is section – 43 of NDPS act is applicable it is also pertinent to mention here that plea of non-compliance of section 42 of NDPS Act by the prosecution is not acceptable and another judgement published in CRL. L.J. 2010, Page No. 1859 Calcutta High Court that accused did not disown the bag before Search and Seizure, rather they demanded search in presence of Gazetted Officer and it was proved to be contraband articles, conviction of the accused persons is proper Para – 7, 10 and 11 and other in the case of Mohan Lal Vs. State of Rajasthan 2015 SAR (Criminal) Page No. – 770 it has been held that where Search and Seizure is held in Public Place Provision of Section – 43 of the act comes into play, question of non-compliance of Section 42(2) would not arise. In the case of State of Punjab Vs. Balbir Singh 1994(3) S.C. Page – 299 it has been held by Honourable Apex Court while considering the provision of section 50 of the NDPS Act that it is imperative and mandatory on the part of Authorized Officer to inform the accused about the right of person to be searched in presence of Gazetted Officer or Magistrate, is mandatory and other 3 bench Judgement is published in 2019 CR.L.J. Page – 407 (S.C.) –B possession of Charos –compliance of Sec. 50 Accused informed about his right to be searched in presence of either Gazetted Officer or Magistrate and chose to be searched in presence of Gazetted Officer Search conducted of not only of a bag of the accused but from his person also and 1.5 Kg of Charos and Rs. 2400/-recovered from him. Mandatory requirement of compliance with sec. – 50 of Act fulfilled conviction proper ( Para – 11 and 12). In view of decision of the Honourable Supreme Court Full Bench “Judgement of State of Punjab Vs. Balinder Singh & Ors decided on 15.10.2019 – [Section – 15] Recovery of Poppy Husk each weighing 34 Kg Appeal against acquittal personal Search of the accused did not result in recovery of contraband. Even if there was any such recovery the same could not be relied upon for want of compliance of the requirement of sec. 50 of the Act. But the Search of the vehicle and recovery of contraband pursuant thereto having stood proved merely because there was non-compliance of sec. 50 of the Act as for as “***Personal Search***” was concerned. No benefit can be extended so as to invalidate the effect of recovery from the Search of the vehicle .Since in the present matter seven bas of Poppy husk each weighing 34 Kg were found from the vehicle which was being driven by accused with the other accused accompanying him their presence and possession of the contraband material stood complicity established - Appeal allowed…”

Therefore the oral and documentary evidence and consideration evidence of PW-1 to PW-6 witnesses and circumstances of evidence is sufficient to prove and establish the prosecution case.

No doubt the Offence under NDPS Act is very serious in nature which is causing immense damage to the Society Economy of the Country and is also destroying the young generation who are future of this country and it requires to be dealt strictly and thus is very limited scope of showing and Leniency to such convict. Therefore it is proved by the prosecution case that all of the accused 1. Akhil Roy, 2. Ashok Dutta, 3. Debasish Mazumder must be punished suitably as per provision of NDPS Act for carrying possession commercial quantity of contraband material of HEROIN for which they could not render any explanation. The Contraband Substance involved in this case is Total 355 gms Heroin for which is commercial quantity as proved in the act and section 21/C /29 of NDPS Act.

Therefore the prosecution case is full proved with all reasonable doubt and the offence for which the charge has been framed and fully established to hold the accused persons guilty of the offence U/S. 21/C/29 of the NDPS Act to warrant conviction under this Act.

Submitted by : -

**Amal Kumar Paul**

**SPL. P.P.**