District : South 24 – Parganas.

In the Court of the Learned 4th Additional District

& Sessions Judge at Alipore.

**S.T. 1 (10) 2021**

***STATE***

=Versus =

***Md. wasim***

***Under Section – 20(b)(ii)/C of NDPS Act.***

….. **Accused Person**

**WRITTEN ARGUMENT ON BEHALF OF THE PROSECUTION**

That brief fact of the case is S.I. Kalyan Biswas, Officer of Narcotic Cell, D/D, Lal Bazar received an information from credible source on 23rd March, 2021 at about 19.00 hours that one young man would come to Cell Narcotic Drags of Charas in the evening on Sundari Mohan Avenue near Ladies Park under Beniapukur Police Station Kolkata- 700014.

Accordingly S.I. – Kalyan Biswas 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 19.40 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. Sanat Kumar Pal Constable Sanatan Mishra and Constable Rajib Chakraborty along with packing materials, weighing Scale D.C. D.D. brass seal and other accessories and Testing Kid at about 20.40 hrs. They l reached to the spot of Ladies Park under Beniapukur Police Station and maintained watch there.

At about 21.00 hrs some pointed out one young man came out on Sundari Mohan Avenue(North) to South direction. Then S.I. Kokhan Biswas and his raiding team member intercepted in front of APT Medicate Service at 11, Sundari Mohan Avenue under Beniapukur Police Station Area Kolkata- 700014. Then S.I. Kolyan Biswas disclosed his identity and purpose of detention to the detainee. Meanwhile same people gathered there and they also disclosed the crowd the purpose of detention and that they had information about the detainee carrying, contraband substance and they required to search them and also requested for the persons to stand as witness. Then two persons voluntarily agreed to stand as witness namely Md. Jaffar and another is Md. Samir , both are residence under Beniapukur Police Station Area.

The detainee disclosed his identity and Md. Wasim son of Md. Halim of 18/2, Mominpore Road, Police station Ekbalpur, Kolakta- 700023.

Thereafter SI. Kalyan Biswas served the written option to the detainee and stated to him that he has legal right to be search in presence of Magistrate or Gazetted Officer he also defined the terms of Magistrate or Gazetted Officer to the detainee, to which the detainee agreed to be searched in presence of Gazetted Officer S.I. Kokhan Biswas then informed the detainee that one person to the rank of Gazetted Officer is accompanying us namely inspection Debdas Jharimuri of Anti Decoity and Robbery Section D/D Lal Bazar, Kolkata Police .The detainee wrote the acceptance in his own hand writing and the option was also signed by the witnesses.

Thereafter inspector Debdas Jharimuri issued another option to the detainee and also disclosed to him that he has been accompanying the raid time and that if he wants he may allowed to be search in presence of Inspector Debdas Jharimuri. Inspector also stated to the detainee informing that he may search this two independent witnesses as well as other police personal present there before his search detainee search all the police persons and witnesses and nothing suspicious could be found from any us.

At about 22.00 hrs as per direction of Gazetted Officer S.I. Kalyan Biswas started to search the detainee from his right hand one red colour carry bag was recovered from the trouser pocket of the detainee upon opening of the red carry bag found eight blocks , each of the blocks were wrapped with brown colour adhesive tape containing soft and semi solid blackish colour substance of lanabis raisin called as “Charas”. That he took weight of all the eight blocks such recovered and it was total 4 kg and cash of Rs. 400/-. S.I. Kalyan Biswas took out small portion of the recovered semi sold substance from each blocks and tested the same with the help of testing kit and found positive for the presence of charas for which he could not give any satisfactory explanation then the detainee Md. Wasim is arrested on spot by the Officer of Narcotic Cell D/D Lal Bazar was registered under Section 20(b)(ii)/C NDPS Act. The seized items was send to the chemical examination and after chemical examination submits a report by his chemical expert showing the item is positive in presence of “CHARAS” and after completion investigation charge sheet was filed against the accused Md.Wazim and at the time of framing charge he plead not guilty to the said change and claimed to be tried.

As many, total PW-1 to PW-7 witnesses were examined by the prosecution and after cross-Examination by the defence in details and taken into New ALIBYE that he was falsely and forcible implicated by the Officer of Narcotic Cell D/D Lal Bazar and his signature on the documents are forcible taken to P.S. this liabilities are goes to defence to prove by documentary and defence witness.

At the out-set it is to be pointed out that in total 4 Kg charas to commercial quantity is recovered from his possession and it was accordingly seized is to settle by various decision that given notice in terms of Sec.- 50 NDPS Act was not attracted though he has the legal right is to be search before Gazetted Officer or Magistrate and he was acceptance and exercise in option requirement of Section 50NDPS Act has been found complied with PW-2 Inspection Debdas Jharimuri of Anti Decoity and Robbery Squad, D/D LalBazar and PW-4 is the chemical Examiner. Expart – who stated that in total 4 kg charas is after physical and chemical examination and result of Chemical Examination Report is that all the seized substance are positive in presence of charas and he is also stated that all the Seized packed seals were intact and identified with the specimen impression and PW-1 S.I. Kalyan Biswas took the leading role and all the raiding team member after cross-examination to prove and corroborated the result of the Raid. That all the witnesses were narrated the entire incident and corroborated the evidence that recovered charas in question from one red colour carry bag containing soft and semi solid blackish colour. Substance of cannabis know as charas which was carrying by Md. Wasim in his right hand and cash of Rs. 400/- were also recovered from the trouser pocket of the detainee.

They also proved the given options requisition was made for the appearance of the Gzetted Officer and independent witnesses in their presence search was made, when the Bus was searched , No personal search has been done but Seizing Officer those requirement of giving notice in terms of Section 50 of NDPS Act was not attracted. This witness proved how he sealed packet and labeled the Seized contraband, PW-3 is the one other witness who was started to registered a case on the basis of the written complainant filed by the S.I. Kalyan Biswas all the Seized articles and accused Md. Waim handed over to him and in total 4 Kg charas was recover from this accused and formal FIR recorded by this witness which was directed and endorsed by the Officer in charge of Beniapukur Police Station Alamat were also produced which were kept by him of the Police Station Malkhana and handed over the Seized Alamat, PW-2 is the Gazetted Officer those requisition so that search would be made in his presence and the presence of two independent witnesses search was conducted by PW-1 Seizing Officer and recovered on spot from Md. Wasim 4Kg charas and Seizure list was prepared and seized articles were sealed packed and lebelled as made in his and this witness put his signature in the document and Gazetted Officer and to public witnesses.

PW-6 Md. Samir son of Md. Kamal residing at 70/D, Tiljala Road, Kolkata - 700046 under Police Station – Beniapukur is examined by Prosecution but this witness at the time of evidence on Dock turned Hostile but exhibit 3,4 and 5 are placed before the witness and he indentified his signature, all the documents being marked exhibited as 3/3,4/3 and 5/3 and 5/5 respectively. Then says that my signature were taken on a blank paper. But he did not stated to where the signature was taken on spot or at Police Station and after cross-examine by defence is “ True that I signed on the blank paper at the Police station and all the liable signature are unchallenged by the defence and another independent witness re not produced due to not found in his address.

PW-6 is corroborated the circumstantial evidence to proved that in his presence the entire search and seizure and also parking sealing were also marked at the time of his evidence on dock he identified his signature in the packet exhibits and other documents. He also proved the written option and also proved the accepted desire to make their search and seizure was completed on particular date, time and places he also proved the accused desire to make their search before the Gazetted Officer at the relevant point of time and after cross-examination by the defence is admitted and recover 4 kg charas is recovered from a bag and marked on the bags is unchallenged.

In this regard Honorable Supreme Court reported judgement , 2013 CRL LJ Page 4058 cited 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 establish hour 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 are reliable. In Rapheat Vs. Devander Singh (Intelligence Officer Director of Revenue Intelligence) reported in 2015 CRL. L. J. Page – 3241 it has be held that merely because panch witness could not produced by the prosecution in the witness box account of their non-availability of the given address prosecution case can not be thrown out “Similar Views was taken by the Honourable Supreme Court in the decision 2007 CRL LJ Page 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. Kalyan Biswas as he was performed earch and Seizure in presence of all the witnesses.

In the relied upon (2003) 8 sec while observing the prudence deities that evidence of Police Witnesses needs to be subjected to strict scrutiny. It was also observed that their evidence cannot be discard merely on the ground that they belong to the Police force and either interested in the investigation or particulars should be sought in the circumstances non-examination of independent witness cannot be said have been destroy the prosecution case.

There is a clear evidence of chemical Examination received the samples articles were intact when the samples was received by him then they were tailed with the samples, impression of seal which was identified and there is no contradiction that after physical and clinical examination result of the contraband. Substance is “CHARAS” admitted by the defence in his cross-examination.

All the documents and exhibits were proved by the prosecution in all respect produced the best evidence beyond all reasonable doubts to established the prosecution case.

As many prosecution witness has been examined by the prosecution and accused has been examined by Under Section 313 Cr.P.C. on his reply he did not claimed anywhere that he was forcibly arrested or falsely implicated. At the time of examination Under Section 313 Cr.P.C. he 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 CRL.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 Md Wasim must be punished suitably as per provision of NDPS Act for carrying possession commercial quantity of contraband material of Charas for which they could not render any explanation. The Contraband Substance involved in this case is Total 4 kg Charas for which is commercial quantity as proved in the act and section 20(b)(ii) /C 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 20(b)(ii) /C of the NDPS Act to warrant conviction under this Act.

Submitted by : -

**Amal Kumar Paul**

**SPL. P.P.**