

Form A

IN THE COURT OF JUDGE, SPECIAL COURT under the NDPS ACT-cum-ADDITIONAL SESSIONS JUDGE, 5TH COURT, BERHAMPORE, MURSHIDABAD. Present :Shri Pushpal Satpathi, Special Court under the NDPS Act-cum-Additional Sessions Judge, 5th Court, Berhampore, Murshidabad. JO Code WB 01301. [Date of the Judgement : 10.07.2025] [NDPS. Case No. 44 of 2014 (CNR NO. <u>WBMD-01-009420-2014</u>)] (Details of FIR/Crime and Police Station)	
Complainant	STATE OF WEST BENGAL OR NAME OF THE COMPLAINANT : SI BINOY SARKAR.
REPRESENTED BY	NAME OF THE LEARNED PUBLIC PROSECUTOR-IN-CHARGE : AINUL HAQUE.
ACCUSED	NAME WITH ALL PARTICULARS : 1. MOFIKUL ISLAM @ MOFI.
REPRESENTED BY	NAME OF THE ADVOCATE : MR. BADARUDDIN AHMED.

FORM B

Date of Offence	15.02.2014.
Date of FIR	15.02.2014.
Date of Charge-sheet	30.06.2014.
Date of framing of charges	05.06.2024.
Date of commencement of Evidence	26.07.2024.
Date on which Judgement is reserved	24.06.2025.

Date of Judgement	10.07.2025.
Date of the Sentencing Order, if any	NIL.

Accused details :

Rank of the Accused	Name of Accused	Date of arrest	Date of release on Bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of Detention undergone during Trial for purpose of Section 428, CrPC.
	1. MOFIKUL ISLAM @ MOFI.	15.02.2014.	07.02.2015.	UNDER SECTION 21(c) OF THE NDPS ACT.	ACQUITTED.		

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Form C

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. Prosecution :

RANK	NAME	NATUE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, OTHER WITNESS).
Witness	Name of witness	Status
PW1	Binoy Sarkar.	The then SI of Police as complainant of this case.
PW2	Anarul Sk.	Home Guard.
PW3	Maidul Sk.	Independent public witness.
PW4	Senaul Sk.	Independent public witness.
PW5	Tanmoy Guita.	SI of Police as IO of this case.

B. Defence Witnesses, if any :

RANK	NAME	NATUE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS).
DW1		
DW2		

C. Court Witnesses, if any :

RANK	NAME	NATUE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS).
CW1		
CW2		

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution :

Sr. No.	Exhibit Number	Description
1.	Exhibit No.1.	Written complaint.
2.	Exhibit No.1/1.	Endorsement on the written complaint.
3.	Exhibit No.2.	Formal FIR.
4.	Exhibit No.3.	Seizure-list dated 15.02.2014.
5.	Exhibit No.3/1.	Signature of PW3 on the seizure- list dated 15.02.2014.
6.	Exhibit No.3/2.	Signature of PW4 on the seizure- list dated 15.02.2014.
7.	Exhibit No.4.	GDE No.693 dated 15.02.2014 regarding receiving of secret source information.
8.	Exhibit No.5.	Rough sketch map of the PO with index.
9.	Exhibit No.6.	<i>Challan</i> by which the exhibit sample was sent for chemical examination vide Lab

		No.250(N)2014 dated 17.02.2014.
10.	Exhibit No.7.	Chemical examination report.

B. Defence :

Sr. No.	Exhibit Number	Description
1.		

C. Court Exhibits :

Sr. No.	Exhibit Number	Description
1.	Exhibit C-1/CW1	
2.	Exhibit C-2/CW2	

D. Material Objects :

Sr. No.	Material Object Number	Description
1.	MO 1	
2.	MO 2	

JUDGEMENT

In recent years, India has been facing a problem of transit traffic in illicit drugs. The spillover from such traffic has caused problems of abuse and addiction. The Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as NDPS Act, for short) provides deterrent punishment for drug trafficking offences. The Preamble of Narcotic Drugs and Psychotropic Substances Act, 1985 speaks that the statute has been enacted for consolidating and amending the existing laws relating to narcotic drugs and for making stringent provision for control and regulation of operations relating to narcotic drugs and psychotropic substances and

also for providing laws for the purpose of forfeiture of property derived from or use in illicit traffic in narcotic drugs and psychotropic substances.

In the instant case, the present accused, namely, Mofikul Islam @ Mofi, is facing trial for alleged commission of offence by him punishable under section 21(c) of the NDPS Act.

PROSECUTION STORY

The instant case has been initiated on the basis of a written complaint by the then SI of police, namely, Binoy Sarkar, attached to *Suti* PS to the effect that on 15.02.2014 at about 15:15 hours, he received a secret source information that one person would come at *Alia More* in a red coloured motor bike bearing registration No. WB-58Q-6700 at around 16:00 hours with contraband substance. He instantly diarised the information vide *Suti* PS GDE No. 693 dated 15.02.2014 and conveyed the same to his superior. After procuring verbal permission of OC, *Suti* PS, he went out along with constable being No. 1822 Arsad Hossain, constable being No. 1905 Dip Narayan Singha, NVF being No. 0104 Biswanath Das and HG being No. 1728 Anarul Sk vide GDE No.694 and MCC No. 381 (both dated the same) taking with them DD kits, weighing machine etc, to work out the source information at about 15:25 hours. At about 15:40 hours, they arrived at *Alia More* and arranged two witnesses who were coming from *Aurangabad* side, namely, Maidul Sk, son of Firoj Sk of village *Purapara* Colony, PS *Suti* and Senaul Sk son of Aminul Islam of village *Purapara* Colony, PS *Suti*. At about 16:05 hours, one person tallying with the source description was detained who came there in a red coloured *Hero Honda (Achiever)* motor cycle bearing Registration No. WB-58Q-6700. He was found carrying a small blue and white coloured bag (*Beauty Tailor and Sonia Bastalaya* was written on the bag) which was hanging from right side handle of the motor cycle. He exchanged mutual identities and informed him in written format the cause of detention and also his freedom, in league with the provisions of NDPS Act, to be searched in presence a Gazetted officer or a Magistrate. As per his wish, the then CI, *Jangipur*, Shri Partha Sikdar, was brought to the spot at about 17:35 hours through official letter of request. In his presence and in presence of the public witnesses, he offered himself to the detainee for searching but nothing incriminating could be recovered from their police force and a nil-seizure-list was prepared to this effect. Thereafter, he searched the suspect in person and from the bag of the detainee who disclosed his name as Mofikul Islam @ Mofi (on interrogation), heroin like substance was recovered which

responded positive to the presence of heroin after testing by DD kit and the total quantity stood at 255 gms (after weighment). The heroin along with bag was packed, marked, sealed and labeled after drawing samples and seized under proper seizure-list. The entire process of search and seizure continued from 17:55 hours to 18:55 hours. Thereafter, the detainee was arrested and they returned to PS with seized contraband substance and accused person. Hence, this case.

INVESTIGATION

Upon complaint of complainant, the then SI of police, namely, Binoy Sarkar, attached to *Suti* PS, *Suti* PS Case No. 61/2014 dated 15.02.2014 u/s 21(c) of the NDPS Act, 1985 was registered and criminal law was set into motion.

After completion of investigation, charge-sheet vide No. 179/2014 dated 30.06.2014 under section 21(c) of the NDPS Act was submitted against the present accused person, namely, Mofikul Islam @ Mofi.

CHARGE

On 05.06.2024, charge was framed against the present accused person, namely, Mofikul Islam @ Mofi, under section 21(c) of the NDPS Act. Hence, the trial.

Accused person was supplied with copy of prosecution papers under section 207 of the Code of Criminal Procedure (hereinafter referred to as the CrPC for short).

Defence adduced not evidence. Defence case, as it appears from the trends of cross-examination and replies given by the accused person during their examination under section 313 of the CrPC, is of his bare innocence.

POINTS FOR DETERMINATION

1. Whether the present accused person, namely, Mofikul Islam @ Mofi, was found in conscious and exclusive possession of one cellophane paper packet containing 255 gms of heroin in contravention of the provisions of NDPS Act?
2. Whether the accused person has been found guilty to the offence charged ?

EVIDENCE-ON-RECORD

Since the witnesses are the eyes and ears of justice, let me scan the evidence of the prosecution witnesses in the light of the materials-on-record to get the right way to proceed.

PW1, namely, SI Binoy Sarkar, then attached to *Suti* PS, being the complainant/seizing officer, has stated in his examination-in-chief that on 15.02.2014 at about 15:15 hours, he received a secret source information that one person would come at *Alia More* in a red coloured motor bike bearing registration No. WB-58Q-6700 at around 16:00 hours with contraband substance. He instantly diarised the information vide *Suti* PS GDE No. 693 dated 15.02.2014 and conveyed the same to his superior. After procuring verbal permission of OC, *Suti* PS, he went out along with constable being No. 1822 Arsad Hossain, constable being No. 1905 Dip Narayan Singha, NVF being No. 0104 Biswanath Das and HG being No. 1728 Anarul Sk vide GDE No.694 and MCC No. 381 (both dated the same) taking with them DD kits, weighing machine etc, to work out the sources information at about 15:25 hours. At about 15:40 hours, they arrived at *Alia More* and arranged two witnesses who were coming from *Aurangabad* side, namely, Maidul Sk, son of Firoj Sk of village *Purapara* Colony, PS *Suti* and Senaul Sk son of Aminul Islam of village *Purapara* Colony, PS *Suti*. At about 16:05 hours, one person tallying with the source description was detained who came there in a red coloured *Hero Honda (Achiever)* motor cycle bearing Registration No. WB-58Q-6700. He was found carrying a small blue and white coloured bag (*Beauty Tailor and Sonia Bastalaya* was written on the bag) which was hanging from right side handle of the motor cycle. He exchanged mutual identities and informed him in written format the cause of detention and also his freedom, in league with the provisions of NDPS Act, to be searched in presence a Gazetted officer or a Magistrate. As per his wish, the then CI, *Jangipur*, Shri Partha Sikdar, was brought to the spot at about 17:35 hours through official letter of request. In his presence and in presence of the public witnesses, he offered himself to the detainee for searching but nothing incriminating could be recovered from their police force and a nil-seizure-list was prepared to this effect. Thereafter, he searched the suspect in person and from the bag of the detainee who disclosed his name as Mofikul Islam @ Mofi (on interrogation), heroin like substance was recovered which responded positive to the presence of heroin after testing by DD kit and the total quantity stood at 255 gms (after weighment). The heroin along with bag was packed, marked, sealed and

labeled after drawing samples and seized under proper seizure-list. The entire process of search and seizure continued from 17:55 hours to 18:55 hours. Thereafter, the detainee was arrested and they returned to PS with seized contraband substance and accused person.

This witness has proved the written complaint, endorsement on the written complaint by the then ASI of police of *Suti* PS, formal FIR and seizure-list dated 15.02.2014 and those have been marked as Ext. Nos. 1, 1/1, 2 and 3 respectively. The witness has also proved the GDE No. 693 dated 15.02.2014 regarding receiving of secret source information and the same has been marked as Ext. 4.

During cross-examination, this witness has stated that he cannot say the topography of the alleged PO. It is not mentioned in Ext.1 that he took endeavour to take the suspect to the nearest Magistrate or a Gazetted officer in terms of section 50 of the NDPS Act. He did not intimate the entire alleged incident to his official superior in terms of section 57 of the NDPS Act.

PW2, namely, Home Guard Anarul Sk, then attached to *Suti* PS, has stated in his examination-in-chief that he knew nothing about the facts and circumstances of this case.

His cross-examination has been declined by Ld. Defence Counsel.

PW3 and PW4, namely, Maidul Sk and Senaul Sk, being the independent public witnesses, have stated in their examination-in-chief that they signed on the seizure-list dated 15.02.2014 being at PS and the signatures of these witnesses have been marked as Ext. Nos. 3/1 and 3/2 respectively.

During cross-examination, these witnesses have stated that police did not disclose them the reason of procurement of their signatures on the document.

PW5, namely, SI Tanmoy Guita, being the IO of this case, has stated in his examination-in-chief that on 15.02.2014, he was entrusted by the then OC, *Suti* PS, SI Subrata Mazumder, with the investigation of *Suti* PS Case No. 61 of 2014 dated 15.02.2014 u/s 21(c) of the NDPS Act. At the time of taking over investigation, he received FIR copy, complaint, seizure-list, seized *alamats* i.e. 255 gms of heroin and possession of one accused person. He perused the documents. He examined the complainant but did not record his statement under section 161 of the CrPC as he corroborated the FIR. He also examined available police personnel and recorded their statements under section 161 of the CrPC. On the same day, he went to the PO at *Alia More* and drew sketch map with index of the PO. This witness

has proved the rough sketch map with index of the PO and the same has been marked as Ext. 5. On 16.02.2014, he forwarded the accused person before the Court and also the seized *alamats* for authentication. On 16.02.2014, he sent the exhibit sample for chemical examination to *SDCRL, Kolkata*. This witness has proved the the *challan* by which the exhibit sample was sent for chemical examination vide Lab No.250(N)2014 dated 17.02.2014 and the same has been marked as Ext. 6. On 05.05.2014, he received the report of chemical examination of the sample so sent for chemical examination, via PS *Malkhana*. This witness has proved the chemical examination report and the same has been marked as Ext. 7. After collecting the report of chemical examination, he submitted charge-sheet being No. 179 of 2014 dated 30.06.2014 u/s 21(c) of the NDPS Act against one accused person.

This witness identified the accused on dock in Court room on the day of his deposition.

During cross-examination, this witness has stated that in the rough sketch map with index, he did not mention the topography of the PO. In the rough sketch map with index mark 'E' indicates one shop under name and style '*Rajdhani Electronics*' under the proprietorship of Samsul Alam, but he did not examine him in connection with this case. He did not personally seize any GDEs, CCs, vehicle log book, *Malkhana* Register in connection with this case.

DECISION WITH REASONS

The NDPS Act (61 of 1985) imposes strict compliance of the various provisions of the statute on the agencies enforcing the law. Any omission, departure or deviation from the compelling provisions of the statute leads to frustration of prosecution. These safeguards have been provided in the statute for avoiding harassment of innocent people at the hands of the law-enforcing agencies. Another reason is that the punishment is stringent and stricter. It is trite to say that stricter are the penal provisions, harder are the degrees of proof. Not only the degree of proof required is placed on higher pedestal but it calls for proof beyond reasonable doubt and not shadow of doubt. The prosecution has to prove initially possession with the suspect and then comes the reverse burden from the suspect to disprove that he was not in possession or that it is not conscious and not having any control over such possession. He has to prove also that he has no culpable mental state. Each and every step of the preventive action commencing from source information till arrest of the culprits, should be adhered to the provisions laid down in the NDPS Act.

Let us have a quick look upon the specific provisions in this regard so that we can discuss the matter from all the possible angles.

In the instant case the accused persons were searched in the public place and as such the provision of section 43 of the NDPS Act read with section 42 of the Act is applicable in this case. The Hon'ble Apex Court in the case of *Karnail Singh vs. State of Haryana reported in (2009) 8 SCC 539* was pleased to hold that compliance with the requirements of sections 42(1) and 42(2) of the NDPS Act in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, i.e, after the search, entry and seizure. Whether there is adequate and substantial compliance with section 42 or not is a question of fact to be decided in each case. While total non-compliance with requirements of sections 42(1) and (2) is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance with section 42. Where the police officer does not record the information at all, and does not inform the official superior at all, then it will be a clear violation of section 42. The above position got strengthened with the amendment to section 42 by Act 9 of 2001. Thus, if such information is not received in the police station but while the officer is on the move, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be feasible or practical to take down in writing the information given to him. In such a situation, he could take action as per sections 42(1)(a) to (d) and thereafter as soon as practical, record the information in writing and forthwith inform the same to the official superior. The material difference between the provisions of sections 42 and 43 of the NDPS Act is that section 42 requires recording of reasons for belief and for taking down of information received in writing with regard to the commission of an offence before conducting search and seizure, section 43 does not contain any such provision and as such while acting under section 43 of the Act, the empowered officer has the power of seizure of the article, etc and arrest of a person who is found to be in possession of any narcotic drug or psychotropic substance in a public place where such possession appears to him to be unlawful. It is the trite law so held by the Hon'ble Apex Court in the case of *Sk. Raju @ Abdul Haque @ Jagga vs. State of West Bengal reported in (2018) 9 SCC*

708 that an empowered officer under section 42 (1) of the NDPS Act is obligated to reduce to writing the information received by him, only when an offence punishable under the Act has been committed in any building, conveyance or an enclosed place, or when a document or an article is concealed in any building, conveyance or an enclosed place. Compliance with section 42, including recording of information received by the empowered officer, is not mandatory, when an offence punishable under the Act was not committed in any building, conveyance or an enclosed place. Section 43 is attracted in situations, where the seizure and arrest are conducted in a public place, which includes any public conveyance, hotel, shop or other place intended for use by or accessible to, the public. According to the provision of section 50 of NDPS Act, it is the bounden duty of the officer conducting the search and seizure to inform the accused person that he had the right to be searched either by the Gazetted Officer of the departments as was mentioned in section 42 or by the nearest Magistrate. It is the authoritative pronouncement of the Hon'ble Apex Court that it is imperative on the part of the police officer to apprise the person intended to be searched of his right under section 50 to be searched only before a Gazetted Officer or a Magistrate. It is held that it is equally mandatory on the part of the authorized officer to make the suspect aware of the existence of his right to be searched before a Gazetted Officer or a Magistrate, if so required by him and this requires a strict compliance. It is ruled that the suspect person may or may not choose to exercise the right provided to him under section 50 of the NDPS Act but so far as the officer is concerned, an obligation is cast upon him under section 50 of the said Act to apprise the suspect of his right to be searched before a Gazetted Officer or a Magistrate vide *i) State of Punjab vs. Baldev Singh reported in (1999) 6 SCC 172 ; ii) NCB vs. Sukh Dev Raj Sodhi reported in (2011) 6 SCC 392 ; iii) Vijaysinh Chandubha Jadeja vs. State reported in (2011) 1 SCC 609 and iv) Ashok Kumar Sharma vs. State of Rajasthan reported in (2013) 2 SCC 67 and in the case of Arif Khan @ Agha Khan vs. State of Uttrakhand reported in (2018) 18 SCC 380*. The prosecution is duty bound to establish that these mandatory fields of search and seizure were complied with. Side by side the prosecution is also duty bound to show that the provisions of section 100 of the CrPC was also complied with. There is no scope to get any relaxation of the conditions for any authority. In the matter of search and seizure, relevant provisions of the Code of Criminal Procedure, 1973 are to be followed which supplement NDPS Act so held by the Hon'ble *Rajasthan* High Court in *Mithu Kar vs. State reported in AIR*

1969 121. Section 51 of the NDPS Act also stipulates that the provisions of the CrPC, 1973 shall apply to all warrants issued, arrests, searches and seizures made under this Act if they are not inconsistent with the provisions of this Act.

On meticulous scrutiny of the depositions of the pivotal prosecution witnesses, I find that PW1, being the complainant/seizing officer, has stated in his cross-examination that he cannot say the topography of the alleged PO. It is not mentioned in Ext.1 (written complaint) that he took endeavour to take the suspect to the nearest Magistrate or a Gazetted officer in terms of section 50 of the NDPS Act. He did not intimate the entire alleged incident to his official superior in terms of section 57 of the NDPS Act. Except lodging of this written complaint in the PS, PW1 has not sent any report in writing to his superior officer within 72 hours after writing down the information so received which is in gross violation of statutory mandate as engrafted under section 42(2) of the NDPS Act and in view of the authoritative pronouncement of the Hon'ble Apex Court in the case of *Karnail Singh (Supra)*. No notice so served upon the suspect has been exhibited in this case resulting in blatant violation of section 50 of the NDPS Act. PW3 and PW4 have only proved their signatures on the seizure-list dated 15.02.2014. During cross-examination, these witnesses have stated that police did not disclose them the reason of procurement of their signatures on the document. PW5, being the IO of this case, has stated in his cross-examination that in the rough sketch map with index (Ext. 5), he did not mention the topography of the PO. In the rough sketch map with index mark 'E' indicates one shop under name and style '*Rajdhani Electronics*' under the proprietorship of Samsul Alam, but he did not examine him in connection with this case. He did not personally seize any GDEs, CCs, vehicle log book, *Malkhana* Register in connection with this case. From the deposition of PW5, it is clearly transpiring that the defects in conducting investigation has gone to a long way in affecting the prosecution case. No raiding party member has been examined in this case. The ocular testimony of the official witnesses are in complete variance with the documentary evidence including the chemical examination report (Ext. 7) so relied upon by the prosecution. Link evidence co-relating sample that was tested with sample allegedly seized from the accused is missing, in such circumstances, reversal of burden of proof under sections 35/54 of the Act would not be occasioned. Though laboratory report was obtained, but identity of the sample stated to have been seized from the accused was not conclusively established by the prosecution. Failure of prosecution in present

case to relate seized sample with that seized from the accused makes the case no different from failure to produce seized sample itself. Mere production of a laboratory report that sample tested, was narcotics cannot be conclusive proof by itself. Sample seized and that tested have to be co-related. In this regard, I place reliance upon decision of the Hon'ble Apex Court in the case of the *Vijay Pandey vs. State of Uttar Pradesh reported in (2019) 18 SCC 215*. I also find from the record that compliance with section 52A of the NDPS Act was also given a complete go-bye in the instant case regarding holding of inventory before the concerned Magistrate in respect of the contraband substance so allegedly seized.

From such glaring irregularities, a reasonable conclusion can be drawn at that the mandatory requirement of sections 42(2), 50, 52A and 57 of the NDPS Act have not been complied with in view of the settled proposition of law as enunciated by the Hon'ble Apex Court and discussed earlier.

Each and every step of the preventive action commencing from source information till arrest of the culprits, should be adhered to the provisions laid down in the NDPS Act. In the present case, the evidence-on-record is not unflinching and sufficient to form a base of conviction. Evidence of PW1, being the informant, fails to rouse confidence in the mind of this Court about the veracity of the case and he has put a death nail to the prosecution case.

None of the witnesses for prosecution gave out a convincing, cogent and irrefutable evidence to place reliance upon prosecution case.

As per the provision of section 52(1) of the NDPS Act, at the time of arrest, the accused must be informed the grounds of arrest. The Hon'ble Apex Court in the case of *Narayanswami vs. Assistant Director reported in (2002) 8 SCC 7* was pleased to observe that the contention that the ground of arrest was not communicated is not tenable. On perusal of the evidences-on-record, I did not find anything that the grounds of arrest was communicated to the accused. This is also another example that the mandatory provision regarding the arrest was not complied with.

From the evidence-on-record, I did not find that any *Malkhana* Register of the concerned PS was seized. The Hon'ble Apex Court has opined on this point that non production of the *Malkhana* Register is fatal for the prosecution case [*Ref: Noor Aga vs. State of Punjab and Anr reported in (2008) 16 SCC 417*]. No iota of evidence has been produced as to where the seized contraband substance as *alamats* was kept from the time of seizure on 15.02.2014 till the sending of the *alamats* to the *SDCRL*,

Kolkata and throughout the entire investigation period. In this regard, I take a cue from the decision of the Hon'ble Apex Court in the case of *State of Rajasthan vs. Tara Singh reported in (2011) 11 SCC 559*. The decision of the Hon'ble Apex Court in the case of *Ashok @ Dangra Jaiswal vs. State of MP reported in AIR 2011 SC 1335* also lends credence in this regard. In a decision as was reported in *AIR 2012 SC 2653* corresponding to *(2012) 7 SCC 712* and subsequent decision of the Hon'ble Apex Court in *(2016) 3 SCC 379 [Union of India vs. Mohanlal]*, the Hon'ble Apex Court warned for safe custody of the contraband at PS to prevent it from going to the market again. This is the reason for which the prosecution was duty bound to show that the seized contraband was kept safely in the *Malkhana* of the PS and for that purpose the production of relevant entry in the *Malkhana* Register was very vital. Section 55 of the NDPS Act clearly mandates the police to take charge of articles seized and delivered and keep in safe-custody. The Hon'ble Apex Court in the case of *Valsala vs. State reported in AIR 1994 SC 117* was pleased to observe that non-compliance of section 55 of the Act may ultimately become fatal for the prosecution. Nowhere in the depositions of prosecution witnesses reflects compliance of such statutory mandate. Regarding the safe-keeping of the seized articles from the chance of substitution, no measure was taken and it is not reflected in the evidence. Unfortunately, the prosecution did not adduce such evidence to prove its shortfall.

It was the argument of the Learned PP-in-charge that the present accused person, namely, Mofikul Islam @ Mofi, has failed to place that he was not present at the alleged PO or that no contraband was found from his possession. In my view, such argument also bears no weight at all. It is the cardinal principle of law that the prosecution must place a complete chain of circumstances and must place its own case. They should not depend upon any latches of the defence. I find substance in the submissions so canvassed by the Learned Defence Counsel highlighting the impropriety and procedural illegalities on the part of the prosecution in complying the mandatory requirements of the NDPS Act and as interpreted from time to time by the Hon'ble Apex Court and other Hon'ble High Courts and so discussed earlier.

In sum, the case of prosecution fails as the prosecution failed to place a complete chain of circumstances and the accused person must find an order of acquittal.

Hence, it is,

O R D E R E D

that the charge under section 21(c) of the NDPS Act was not established against the present accused person, namely, Mofikul Islam @ Mofi.

The said accused person, named above, is found not guilty and is acquitted from this case u/s 235(1) CrPC., 1973.

Present accused person, namely, Mofikul Islam @ Mofi, be set at liberty and be discharged from his bail bond(s).

The red coloured *Hero Honda (Achiever)* motor cycle bearing Registration No. WB-58Q-6700, is subject to decision whether the said vehicle is liable to confiscation or the same will be returned to its lawful claimant. Issue notice to registered owner of the vehicle, if any, and the disposal proceedings in this regard under section 63 of the NDPS Act will follow accordingly.

In compliance with the directives given in CRA 266 of 2020 with CRAN 1 of 2020 in the case of *Sabitri Bhuniya vs. the State of West Bengal*, it is directed that a copy of this judgment be forwarded to the DLSA *Murshidabad* through E-mail for information of the Officer-in-charge of *Suti* PS for enabling the informant to prefer an appeal under section 372 of the CrPC.

The seized contraband substance will be confiscated to the State as per the provision of the NDPS Act on expiry of period of filing any appeal against this judgment.

A copy of the judgment be sent to the Drugs Disposal Committee, *Murshidabad* through E-mail.

Dictated & corrected by me,

Judge, Spl. Court,
under NDPS Act. Judge, Special Court under NDPS Act –cum-
Addl. Sess. Judge, 5th Court, Berhampore, Msd.