

**Sessions case No. 02 of 2023**  
**R-02 of 2023**  
**Present : Sri Madan Mohan Mishra**  
**JO No.WB00727**

Order No. 28 dated 15.09.2025

Accused on bail Gopal Sharma is found unrepresented without step.

Prosecution is also found unrepresented without step.

On repeated calls none appears to represent accused or prosecution.

It is now 12.25 PM.

Materials on record suggest that accused Gopal Sharma was apprehended by police officer being found in possession of 65 bottles of different brands of cough syrup of 100 ml. on 22.02.2021 and the case under section 27(b)(ii) of Drugs and Cosmetics Act was started against the accused. Accused in course of investigation has been granted bail on 15.03.2021 and Charge-sheet for offence punishable u/s 27(b)(ii) of Drugs and Cosmetics Act, 1940 has been submitted against the accused on 17.06.2022 by the police officer and the cognizance for the offence punishable u/s 27(b)(ii) of Drugs and Cosmetics Act, 1940 has been taken by learned CJM, Darjeeling. After supplying copies to accused under section 207 CrPC on 03.02.2023 learned CJM, Darjeeling on finding that offence for which charge-sheet has been submitted and cognizance has been taken is exclusively triable by the Court of Sessions committed the case u/s 209 CrPC to the Court of learned Sessions Judge, Darjeeling. While considering an application filed by accused praying for discharge from the case it has been observed by learned Sessions Judge, Darjeeling in his order dated 11.07.2023 that the seized materials comes under the purview of NDPS Act and the case be registered as NDPS case and since then no cognizance for offence punishable under the provisions of NDPS Act has been taken till 25.08.2025 while no reference to the provisions contained under section 42, 43 and 50 of NDPS Act has been made at the time of the alleged seizure and the case has been transferred to this Court being a Special Court, under NDPS Act.

On going through the different provisions contained under the Drugs and Cosmetics Act, 1940 a doubt crops up whether the offence punishable u/s 27(b)(ii) of Drugs and Cosmetics Act, 1940 for which cognizance has been taken for which maximum punishment prescribed is imprisonment upto five years is triable by a Court of Sessions or a Special Court under Drugs and Cosmetics Act, 1940 or the Special Court under NDPS Act for which the cognizance has not been taken till this day.

In view of the resolution of local bar association by which the learned members of the local bar have resolved not to attend the Court proceeding for indefinite period when both accused and prosecution are found unrepresented, the case is adjourned for ends of justice till 14.11.2025.

To 14.11.2025 for appearance of accused.

Accused on bail as before.

Dictated and corrected by me

Sd/-

Additional Sessions Judge,  
3rd Court, Darjeeling

Sd/-

Additional Sessions Judge,  
3rd Court, Darjeeling