

Form A

IN THE COURT OF ADDITIONAL DISTRICT AND SESSIONS JUDGE,
2nd COURT -CUM- JUDGE, SPECIAL COURT (UNDER N.D.P.S. ACT),
BERHAMPORE, MURSHIDABAD.

Present : **Shri Ajay Kumar Singh (J.O. Code : WB 01303),**
Addl. District and Sessions Judge, 2nd Court,
- Cum -
Judge, Special Court, (Under N.D.P.S. Act),
Berhampore, Murshidabad.

Date of the Judgment : 14.08.2026

N.D.P.S Case No. 23 of 2007

CIS Reg. No. 104 of 2014

CNR No. WBMD01-000113-2007

(Details of FIR/Crime and Police Station)

Complainant	STATE OF WEST BENGAL OR NAME OF THE COMPLAINANT : SI Subir Kumar Pal
REPRESENTED BY	Mr. Abul Kalam Azad Biswas (Ld. Special Public Prosecutor)
ACCUSED	1. Sushil Mondal Son of Lt. Ananda Mondal Of village Mojlishpur PS Saktipur, District Murshidabad. 2. Bipad Bhanjan Mondal Son of Lt. Ananda Mondal Of village Mojlishpur PS Saktipur, District Murshidabad. 3. Lokman Mondal @ Lakshman Mondal Son of Lt. Mahadeb Mondal Of village Mojlishpur PS Saktipur, District Murshidabad. 4. Biswanath Mondal Son of Lt. Ananda Mondal Of village Mojlishpur PS Saktipur, District Murshidabad.

	5. Hiren Biswas Son of Lt. Dharanidhar Biswas Of village Mojlishpur PS Saktipur, District Murshidabad. 6. Paresh Biswas Son of Lt. Dharanidhar Biswas Of village Mojlishpur PS Saktipur, District Murshidabad. 7. Ashalata Mondal @ Doman Mondal Wife of Lt. Sudhir Kumar Mondal Of village Mojlishpur PS Saktipur, District Murshidabad. 8. Sudhakar Nandi Son of Lt. Bijay Nandi Of village Esmalipur PS Saktipur, District Murshidabad. 9. Dibakar Nandi Son of Lt. Bijay Nandi Of village Esmalipur PS Saktipur, District Murshidabad. 10. Panchanan Saudagar Son of Lt. Madhu Saudagar Of village Mojlishpur PS Saktipur, District Murshidabad. 11. Chittaranjan Mondal Son of Lt. Ananda Mondal Of village Mojlishpur PS Saktipur, District Murshidabad.
REPRESENTED BY	Mr. Kanchanlal Mukherjee Mr. Pranay Mondal, Ld. Advocates

FORM B

Date of offence	18.02.2007
Date of FIR	18.02.2007
Date of charge sheet	No. 61/2013, dated 09.02.2013, Submitted in the court on 15.02.2013
Date of Framing of Charges	28.08.2014
Date of commencement of Evidence	08.07.2019

Date on which Judgement is reserved	Nil
Date of the Judgement	14.08.2026
Date of the Sentencing Order, if any	Nil

Accused details :

Ran k of the Acc used	Name of Accused	Date of arrest	Date of release on Bail	Offences charged with	Whether acquitted or convicted	Senten ce impose d	Period of Detentio n Undergo ne during Trial for purpose of Section 428. Cr.P.C.
01	Sushil Mondal	08.08.2007	13.09.2007	u/S. 18/46 of the N.D.P.S. Act	Acquitted	Nil	N.A.
02	Bipad Bhanjan Mondal	08.08.2007	13.09.2007	u/S. 18/46 of the N.D.P.S. Act	Acquitted	Nil	N.A.
03	Lokman Mondal @ Lakshman Mondal	06.08.2008	06.08.2008	u/S. 18/46 of the N.D.P.S. Act	Acquitted	Nil	N.A.
04	Biswanath Mondal	(Surrendered on 24.07.2008)	24.07.2008	u/S. 18/46 of the N.D.P.S. Act	Acquitted	Nil	N.A.
05	Hiren Biswas	(Surrendered on 27.08.2008)	27.08.2008	u/S. 18/46 of the N.D.P.S. Act	Acquitted	Nil	N.A.
06	Paresh Biswas	(Surrendered on 27.08.2008)	27.08.2008	u/S. 18/46 of the N.D.P.S. Act	Acquitted	Nil	N.A.
07	Ashalata Mondal @ Doman Mondal	(Surrendered on 29.01.2009)	29.01.2009	u/S. 18/46 of the N.D.P.S. Act	Acquitted	Nil	N.A.

08	Sudhakar Nandi	(Surrendered on 29.07.2008)	29.07.2008	u/S. 18/46 of the N.D.P.S. Act	Acquitted	Nil	N.A.
09	Dibakar Nandi	(Surrendered on 29.07.2008)	29.07.2008	u/S. 18/46 of the N.D.P.S. Act	Acquitted	Nil	N.A.
10	Panchanan Saudagar	(Surrendered on 29.07.2008)	29.07.2008	u/S. 18/46 of the N.D.P.S. Act	Acquitted	Nil	N.A.
11	Chittaranjan Mondal	(Surrendered on 24.07.2008)	24.07.2008	u/S. 18/46 of the N.D.P.S. Act	Acquitted	Nil	N.A.

Form C
LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. Prosecution :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW 1	Biplab Chandra	Photographer
PW 2	Bidhu Bhusan Thakur	Constable of Police
PW 3	Souvik Banerjee	The then BDO, Beldanga – II
PW 4	Mukul Chandra Mondal	Government Amin
PW 5	Pradip Kumar Saha	Government Amin
PW 6	Arup Kumar Pal	The then IC, Saktipur Bit House

B. Defence Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
Nil		

C. Court Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
Nil		

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution :

Sr. No.	Exhibit Number	Description
1	Ext. 1. (PW.3)	Signature of PW.3 with official seal on the seizure list dated 19.02.2007.
2	Ext. 1/1. (PW.4)	Signature of PW.4 on the seizure list dated 19.02.2007.
3	Ext. 1/2. (PW.5)	Signature of PW.5 on the seizure list dated 19.02.2007.
4	Ext. 1/3. (PW.6)	Signature of PW.6 on the seizure list dated 19.02.2007.

B. Defence :

Sr. No.	Exhibit Number	Description
Nil		

C. Court Exhibits :

Sr. No.	Exhibit Number	Description
Nil		

D. Material Objects :

Sr. No.	Material Object Number	Description
Nil		

J U D G M E N T

1. The factual matrix of the prosecution case in brief is that on 19.02.2007 at 10.00 hours SI Subir Kumar Pal [informant] received a secret source information that illegal Opium Poppy plantation was being cultivated by some persons of Majlishpur village. Accordingly the informant diarized the said information vide GDE No. 789 dated 19.02.2007 at 10.05 hours and informed the same to his superior officers, i.e. the then CI, Sadar (Berhampore) and the then DYSP (D&T), Murshidabad and as per their instruction, the informant formed a raid team. Thereafter the informant along with force taking necessary articles from PS left for the place of occurrence, i.e. Mouza Majlishpur and Esmalipur to act upon the said source information. At 10.45 hours they reached Laranger Math just on the west of Azimganj-Katwa railway track near Bazarsau Railway Station and found from the railway track the vast land of Opium Poppy plantation with flowers. The informant sent requisition to the then BDO, Beldanga – II namely Sri Souvik Banerjee and the then BL&LRO, Beldanga – II to reach at the spot and remain present during search/seizure operation. At 10.45 hours the then BDO, Beldanga – II reached at the spot along with two Government Amins namely Pradip Kr. Saha and Mukul Chandra Mondal of BL&LRO, Beldanga – II office. As per instruction of the then BDO, Beldanga – II, the informant arranged some labourers and one photographer, namely Biplab Chandra from Bazarsau area. The informant also invited two disinterested public witnesses, namely Biman Sk. and Kalu Bitter to remain present at the time of search/seizure operation. Thereafter in presence of disinterested public witnesses, the then BDO, Beldanga – II, the then BL&LRO, Beldanga – II and two Government Amins, the informant took three samples from each of the 10 plots of land [Plot Nos. 127/1399 (JL 76), 66 (JL 76), 65 (JL 76), 12 (JL 76), 87 (JL 76), 126 (JL 76), 13 (JL 76), 102 (JL 76) – all under mouza Ismalipur and Plot Nos. 215 (JL 69) and 217 (JL 69) – under mouza Majlishpur]. The photographer took the photographs of the plot of lands. On measuring, the said Opium Poppy plantation was found to be 30 quintals in 6 acres of land. Thereafter the informant collected samples and seized the same by preparing a seizure list. The Government Amin disclosed the informant that he would inform the names of the owners and cultivators of the land later on after consulting the office record. As per order of the then BDO – Beldanga II and with the help of the labourers, the informant destroyed the remaining Opium Poppy plantation and thereafter returned to Rejinagar PS along with the seized alamats of this case where he had lodged a written complaint for starting a specific case.

2. Out of such typed complaint, Rejinagar P.S case No. 28 of 2007 dated 19.02.2007 was started under section 18 of the N.D.P.S. Act and the case was endorsed to SI Md. Bahar Ali for investigation. Accordingly, police took up investigation and after its conclusion submitted charge-sheet against the accused persons under section 18(b)/46/36 of the N.D.P.S. Act.

3. Copies of the relevant documents were supplied upon the accused persons under section 207 Cr.PC and thereafter charge was framed against them for the offence punishable under Section 18/46 of the N.D.P.S. Act. The contents of charge were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried. Hence, this trial. Thereafter the cases against accused Mohit Biswas, Jai Kishan Mondal, Sarabala Mondal and Santi Biswas were filed for ever due to their deaths vide orders dated 06.03.2014, 02.06.2014, 10.12.2015 and 26.11.2025 respectively.

4. The defence case, as it appears from the trend of cross examination of different witnesses as well as examination of the accused persons under Section 351 of BNSS, 2023 / Section 313 Cr.PC, is denial of the case of the prosecution and that the accused persons have been falsely implicated in the instant case. However the accused persons did not prefer to adduce any evidence in their defence despite opportunity was given to them.

5. Prosecution examined as many as six (6) witnesses in all. The documents from the side of the prosecution have been marked as Ext.1 to Ext. 1/3 respectively.

POINTS FOR DETERMINATION

1. Whether the accused persons namely, Sushil Mondal, Bipad Bhanjan Mondal, Lokman Mondal @ Lakshman Mondal, Biswanath Mondal, Hiren Biswas, Paresh Biswas, Ashalata Mondal @ Doman Mondal, Sudhakar Nandi, Dibakar Nandi, Panchanan Saudagar and Chittaranjan Mondal on 09.02.2007 at about 11.30 a.m. were found cultivating Opium Poppy illegally in the Plot Nos. 127/1399, 66, 65, 12, 87, 126, 13, and 102 under Mouza Mojlshpur violating the provisions of NDPS Act and that they thereby committed an offence punishable under Section 18/46 of the N.D.P.S. Act ?

2. Whether the Prosecution has been able to prove its case beyond reasonable doubt ?

EVIDENCE ON RECORD

6. Prosecution has examined six witnesses out of ten witnesses cited in the charge-sheet in this case. Let me scan what they have testified before this court to prove the case of the prosecution.

7. PW.1 [Biplab Chandra] is a member of the raiding party team. He has stated in his testimony that he works in a private company. On 29.02.2007 he was an unemployed man. On that day he was taken by police of Rejinagar PS to Ismalipur and Majlishpur mouzas to take photograph of poppy cultivation by the camera of police and after taking the photographs he handed over the said camera to the police. Ld. Advocate for the Defence has not preferred to cross-examine this witness.

8. PW. 2 [C/135 Bidhu Bhusan Thakur] is another member of the raiding party team. He has stated in his testimony before this Court that on he is a retired constable of police. On 19.02.2007 he was attached with Rejinagar PS as constable. At that time, SI Subir Kumar Pal was the then Officer-in-Charge of that police station. PW.2 has further stated that on that day during the course of his duty he proceeded to Majlishpur-Alipur mouza within the jurisdiction of Rejinagar PS, led by the then OC of the concerned PS namely SI Subir Kumar Pal and SI Md. Bahar Ali. He has also stated that he went there regarding cultivation of 'posto' (poppy) in the said land. PW.2 could not say who identified the piece of said land where 'posto' was cultivating. PW.2 also could not say the name of the owner of the said land. PW.2 has denied the suggestion put by the Ld. Advocate for the Defence.

9. PW.3 [Souvik Banerjee] is the then BDO, Beldanga - II. He has stated in his testimony before this Court that he is the Joint Secretary attached to the Department of Irrigation and Water, Kolkata, West Bengal. On 19.02.2007 he was posted as BDO at Beldanga – II. On that day, he was called for to perform Executive Magistrate duty being local Magistrate of Beldanga – II Block. PW.3 has further stated that he was informed by Rejinagar PS to reach at the PO regarding the destruction of poppy plants and the land was situated at Mojlishpur mouza under Saktipur Gram Panchayet, Murshidabad. Accordingly he reached to the spot. The police personnel of Rejinagar PS accompanied him. PW.3 has also stated that reaching there he saw that some police personnel were also present there and he found poppy plantation was standing in the

agricultural land. Thereafter as per his order, the poppy plantation standing in the agricultural field was destroyed. PW.3 has further stated that after destruction of the poppy plantation standing in the field, seizure was made by the local police. He has further stated that some sample was also prepared by the local police and PW.3 had put his endorsement on the seizure list dt. 19.02.2007 by putting his signature with official seal. PW.3 has proved his signature with official seal on the seizure list dated 19.02.2007 which was marked as Ext.1. In his cross-examination, PW.3 has admitted that he did not maintain a diary for his official duty. PW.3 has further admitted that he left for the alleged PO in his official vehicle and the log book of his official vehicle was maintained. PW.3 has also admitted that he does not recall whether he was interrogated by the I.O. of this case or not. PW.3 gave the order of destruction for poppy plantation standing in the agricultural field verbally. He has denied the other suggestions put by the Ld. Advocate for the Defence.

10. PW.4 [Mukul Chandra Mondal] is the then Government Amin, attached with BLRO office, Beldanga – II. He has stated in his testimony before this Court that on 19.02.2007 he was working as Government Amin and posted at BLRO office of Beldanga-II. On the said date the then BLRO Beldanga-II instructed PW.4 to accompany him to visit Ismalipur Mouza J.L No.76 for the purpose of plot inspection in the said village. In the said team there were 4 to 5 official persons who accompanied the then BLRO Beldanga-II. As far as PW.4 recalls, in the said team the then BDO Beldanga, the then OC Beldanga and the police force of Rejinagar PS including PW.4 had accompanied the then BLRO Beldanga-II for the purpose of conducting an inspection in the said village. PW.4 has further stated that their team reached the said village at about 11 AM. After reaching at the spot, the then BLRO Beldanga-II instructed him to identify the agrarian plots whereupon the poppy plantation was standing. Accordingly, PW.4 identified those plots based upon the information available in the mouza map which PW.4 was carrying with him. During identification of those plots PW.4 found that plots bearing Nos. 65, 66, 87, 117, 102 of Ismilepur Mouza J.L No.76. PW.4 has further stated that he also identified other agrarian plots of Mojlespur mouza, J.L No. 69 bearing Nos. 215 and 217 whereupon poppy plantation was standing. The poppy plantation in those plots were in harvested condition. As per instruction of the then BLRO Beldanga-II, the residue of poppy plants including leaves, fruits and roots were collected which was seized by the police by preparing a seizure list dt.19.02.2007. PW.4 also put his signature on the said seizure list as a witness. At the relevant time of

inspection of those plots, the owners of the plots were not present. PW.4 has proved his signature on the seizure list dated 19.02.2007 which was marked as Ext.1/1. In his cross-examination, PW.4 has admitted that he had accompanied the then BLRO Beldanga-II as per his instruction and no written order was given to PW.4 for the said duty. He has also admitted that he was not interrogated by the IO during investigation of this case and he was deposing regarding the alleged incident for the first time before this court. PW.4 has denied the other suggestions put by the Ld. Advocate for the Defence.

11. PW.5 [Pradip Kr. Saha] is the then Government Amin, attached with BLRO office, Beldanga – II. He has stated in his testimony before this Court that on 19.02.2007 he was working as Government Amin and posted at BLRO office of Beldanga-II. On the said date the then BLRO Beldanga-II instructed PW.5 to accompany him to visit Ismalipur Mouza J.L No.76 for the purpose of plot inspection in the said village. In the said team there were 4 to 5 official persons who accompanied the then BLRO Beldanga-II. As far as PW.5 recall, in the said team the then BDO Beldanga, the then OC, Saktipur and the police force of Saktipur PS including PW.5 with his colleague Amin Mukul Chandra Mondal had accompanied the then BLRO Beldanga-II for the purpose of conducting an inspection in the said village. PW.5 has further stated that their team reached the said village at about 11 AM. After reaching at the spot, the then BLRO Beldanga-II instructed PW.5 to identify the agrarian plots whereupon the poppy plantation was standing. Accordingly, PW.5 identified those plots based upon the information available in the mouza map which he was carrying with him. During identification of those plots PW.5 found that plots bearing Nos. 66, 67, 102, 113 and others of Ismilepur Mouza J.L No.76. PW.5 has further stated that he also identified other agrarian plots of Mojlespur mouza, J.L No.69 bearing No. 215 and 217 whereupon poppy plantation was standing. As per instruction of the then BLRO Beldanga-II, the poppy plantation standing in those plots were destructed and the residue of poppy plants including leaves, fruits and roots were collected which was seized by the police by preparing a seizure list dt. 19.02.2007. PW.5 also put his signature on the said seizure list as a witness. He has also apprised this Court that at the relevant time of inspection of those plots, the owners of the plots were not present. PW.5 has proved his signature on the seizure list dt. 19.02.2007 which was marked as Ext.1/2. In his cross-examination, PW.5 has admitted that he had accompanied the then BLRO Beldanga-II as per his instruction and no written order was given to him for the said duty. PW.5 has also admitted that he was not

interrogated by the IO during investigation of this case and he was deposing regarding the alleged incident for the first time before this court. PW.5 has denied the other suggestions put by the Ld. Advocate for the Defence.

12. PW.6 [SI Arup Kumar Pal] is a member of the raiding party team. He has stated in his testimony before this Court that on 19.02.2007, he was posted as in-charge at Saktipur Bit House under Rejinagar PS as Sub-inspector of police. On that date, at about 10.45 hrs. the then officer in charge of Rejinagar PS, SI Subir Kumar Pal received a reliable information that some plots of land under Majlishpur mouza and Ejmalipur Mouza under Rejinagar PS were cultivated with Opium Poppy illegally and in unauthorized manner. The then Officer in Charge organized a raid team after informing the superior police officer of that district and immediately arranged to include the then BDO, Beldanga-II Block, BL&LRO, Beldanga-II and Govt. Amin of the office of BL & LRO Department with the raid team. Accordingly, they along with Shri Souvik Banerjee, the then BDO, Beldanga-II and two Govt. Amins namely Pradip Kr. Saha and Mukul Chandra Mondal both of the office of BL&LRO, Beldanga-II Development Block reached the site of Opium Poppy cultivation under the mouza of Ejmalipur and Majlishpur. PW. 6 has further stated that at about 11 AM, they all reached the said plots of land and found that huge lands were under cultivation with unauthorized Opium Poppy plants which were found full grown with Opium Poppy fruits, flowers and leaves. The plots of lands were identified after due survey of those lands with the help of the Govt. Amins in the team as mentioned above. So far as PW.6 could recall those plots of lands were plot Nos. 12, 13, 65, 66, 87, 126, 127 & others under Ejmalipur mouza under JL-76, under Rejinagar PS. Besides, Plot Nos. 215 and 217 under Majlishpur mouza under JL-69, under Rejinagar PS were identified by those Amins. After identifying those plots of lands, the Officer in Charge, Shri Subir Kumar Pal the complainant of this case, collected samples of the said Opium Poppy plants after taking fruits, flowers and top of plants and prepared exhibits duly marked after labelling and sealing. After preparation of exhibits, and after destruction of those cultivated plants, the Officer in Charge, Subir Kumar Pal, seized those exhibits of poppy plantation in presence of them under a proper seizure list. PW. 6 put his signature on the said seizure list as a witness. The said seizure list was also signed by the other witnesses present there i.e. the then BDO, Beldanga-II block and two Govt. Amins and two independent witnesses namely Kali Bitter and Biman Sk. Thereafter, the team returned to the Rejinagar PS where a written complaint was lodged by the then Officer in

Charge, Rejingar PS regarding this incident. PW. 6 has proved his signature on the seizure list dt.19.02.2007 which was marked as Ext.1/3. PW. 6 has admitted in his cross-examination that before leaving his place of posting, during the duty hours, he used to make entry in the General Diary. When they reached at the spot, PW.6 did not witness any person present at those alleged agricultural fields. PW.6 has also admitted that he was not entrusted to collect any document regarding the land records of those agricultural fields nor did he collect the same. During investigation of this case PW.6 was interrogated by the I/O of this case. He did not hand over the GD entry related to this case to the I/O of this case. PW. 6 has denied the other suggestions put by the Ld. Advocate for the Defence.

DECISION WITH REASONS

13. It is the case of the prosecution that on 19.02.2007 at 10.00 hours SI Subir Kumar Pal [informant] received a secret source information that illegal Opium Poppy plantation was being cultivated by some persons of Majlishpur village. Accordingly the informant diarized the said information vide GDE No. 789 dated 19.02.2007 at 10.05 hours and he informed the same to his superior officers, i.e. the then CI, Sadar (Berhampore) and the then DYSP (D&T), Murshidabad and as per their instruction, the informant formed a raid team. Thereafter the informant along with force taking necessary articles from PS left for the place of occurrence, i.e. Mouza Majlishpur and Esmalipur to act upon the said source information. At 10.45 hours they reached Laranger Math just on the west of Azimganj-Katwa railway track near Bazarsau Railway Station and found from the railway track the vast land of Opium Poppy plantation with flowers. The informant sent requisition to the then BDO, Beldanga – II namely Sri Souvik Banerjee and the then BL&LRO, Beldanga – II to reach at the spot and remain present during search/seizure operation. At 10.45 hours the then BDO, Beldanga – II reached at the spot along with two Government Amins namely Pradip Kr. Saha and Mukul Chandra Mondal of BL&LRO, Beldanga – II office. As per instruction of the then BDO, Beldanga – II, the informant arranged some labourers and one photographer, namely Biplab Chandra from Bazarsau area. The informant also invited two disinterested public witnesses, namely Biman Sk. and Kalu Bitter to remain present at the time of search/seizure operation. Thereafter in presence of disinterested public witnesses, the then BDO, Beldanga – II, the then BL&LRO, Beldanga – II and two Government Amins, the informant took three samples from each of the 10 plots of land [Plot Nos. 127/1399 (JL 76), 66 (JL 76), 65 (JL 76), 12 (JL 76), 87 (JL 76), 126 (JL 76), 13 (JL 76), 102 (JL 76) – all under mouza Ismalipur and

Plot Nos. 215 (JL 69) and 217 (JL 69) – under mouza Majlishpur]. The photographer took the photographs of the plot of lands. On measuring, the said Opium Poppy plantation was found to be 30 quintals in 6 acres of land. Thereafter the informant collected samples and seized the same by preparing a seizure list. The Government Amin disclosed the informant that he would inform the names of the owners and cultivators of the land later on after consulting the office record. As per order of the then BDO – Beldanga II and with the help of the labourers, the informant destroyed the remaining Opium Poppy plantation and thereafter returned to Rejinagar PS along with the seized alamats of this case where he had lodged a written complaint for starting a specific case.

14. To prove the charge of accusation against the accused persons herein, the prosecution has examined six witnesses out of ten charge-sheet witnesses.

15. During appreciation of prosecution evidence on record, I do find that PW.1 [Biplab Chandra] is the photographer who took photographs of the search/seizure procedure of the instant case and after taking the photographs he handed over the said camera to the police. It also transpires from the testimony of PW.2 [C/135 Bidhu Bhusan Thakur, a member of the raiding party team] that on 19.02.2007 during the course of his duty he proceeded to Majlishpur-Alipur mouza within the jurisdiction of Rejinagar PS under the leadership of the then OC, namely SI Subir Kumar Pal and the IO of this case, namely SI Md. Bahar Ali. However, PW.2 could not say who identified the piece of said land where ‘posta’ was cultivating. He also could not say the name of the owners of the said land.

16. From perusal of the testimony of PW.3 [Souvik Banerjee], it appears that on 19.02.2007 he was posted as the then BDO, Beldanga – II and he was informed by Rejinagar PS to reach at the PO regarding the destruction of poppy plantation. Accordingly he reached to the spot along with the police personnel of Rejinagar PS and reaching there he saw that poppy plantation was standing in the agricultural land. Thereafter as per his order, the poppy plantation standing in the agricultural field was destroyed. It appears from his cross-examination, that he did not maintain a diary for his official duty and he does not recall whether he was interrogated by the I.O. of this case or not. PW.3 gave the order of destruction for poppy plantation standing in the agricultural field verbally.

17. During appreciation of evidence of PW.4 [Mukul Chandra Mondal, the then Government Amin, attached with BLRO office, Beldanga – II] it appears that on 19.02.2007 as per instruction of the then BLRO Beldanga-II, he visited Ismalipur Mouza J.L No.76 for the purpose of plot inspection. After reaching at the spot, the then BLRO Beldanga-II instructed PW.4 to identify the agrarian plots whereupon the poppy plantation was standing and accordingly, PW.4 identified those plots based upon the information available in the mouza map which PW.4 was carrying with him. During identification of those plots, PW.4 found that plots bearing Nos. 65, 66, 87, 117, 102 of Ismilepur Mouza J.L No.76. It also transpires that PW.4 also identified other agrarian plots of Mojlespur mouza, J.L No. 69 bearing Nos. 215 and 217 whereupon poppy plantation was standing and as per instruction of the then BLRO Beldanga-II, the residue of poppy plants including leaves, fruits and roots were collected which was seized by the police by preparing a seizure list dt.19.02.2007. PW.4 also put his signature on the said seizure list as a witness. It also transpires from his testimony that at the relevant time of inspection of those plots, the owners of the plots were not present. From his cross-examination, it also transpires that PW.4 had accompanied the then BLRO Beldanga-II as per his instruction and no written order was given to PW.4 for the said duty and he was not interrogated by the IO during investigation of this case.

18. From perusal of the testimony of PW.5 [Pradip Kr. Saha] it appears that he was the then Government Amin, attached with BLRO office, Beldanga – II. He has stated in his testimony before this Court that on 19.02.2007, the then BLRO Beldanga-II instructed PW.5 to visit Ismalipur Mouza J.L No.76 for the purpose of plot inspection in the said village and after reaching at the spot, the then BLRO Beldanga-II instructed him to identify the agrarian plots whereupon the poppy plantation was standing and accordingly, PW.5 identified those plots based upon the information available in the mouza map which he was carrying with him. During identification of those plots PW.5 found that plots bearing Nos. 66, 67, 102, 113 and others of Ismilepur Mouza J.L No.76 and he also identified other agrarian plots of Mojlespur mouza, J.L No.69 bearing No. 215 and 217 whereupon poppy plantation was standing. As per instruction of the then BLRO Beldanga-II, the poppy plantation standing in those plots were destructed and the residue of poppy plants including leaves, fruits and roots were collected which was seized by the police by preparing a seizure list dt. 19.02.2007. PW.5 also put his signature on the said seizure list as a witness. It also transpires that at the relevant time of inspection of those plots, the owners

of the plots were not present. From his cross-examination, it appears that PW.5 has admitted that he had accompanied the then BLRO Beldanga-II as per his instruction and no written order was given to him for the said duty and he was not interrogated by the IO during investigation of this case.

19. During appreciation of evidence of PW.6 [SI Arup Kumar Pal] it transpires that he is a member of the raiding party team. On 19.02.2007, PW.6 was posted as in-charge at Saktipur Bit House under Rejinagar PS as Sub-inspector of police and on that date, at about 10.45 hrs. the then Officer in Charge of Rejinagar PS namely SI Subir Kumar Pal received a reliable information that some plots of land under Majlishpur mouza and Ejmalipur Mouza under Rejinagar PS were cultivated with Opium Poppy illegally and in unauthorized manner. Accordingly, he along with Shri Souvik Banerjee, the then BDO, Beldanga-II and two Govt. Amins namely Pradip Kr. Saha and Mukul Chandra Mondal both of the office of BL&LRO, Beldanga-II Development Block reached the site of Opium Poppy cultivation under the mouza of Ejmalipur and Majlishpur and found that huge lands were under cultivation with unauthorized Opium Poppy plants which were found full grown with Opium Poppy fruits, flowers and leaves. The plots of lands were identified after due survey of those lands with the help of the Govt. Amins. After identifying those plots of lands, the Officer in Charge, Shri Subir Kumar Pal, the informant of this case, collected samples of the said Opium Poppy plants after taking fruits, flowers and top of plants and prepared exhibits duly marked after labelling and sealing. After preparation of exhibits, and after destruction of those cultivated plants, the Officer in Charge, Subir Kumar Pal, seized those exhibits of poppy plantation in presence of them under a proper seizure list. It also transpires from the cross-examination of PW. 6 that when they reached at the spot, PW.6 did not witness any person present at those alleged agricultural fields. PW.6 was not entrusted to collect any document regarding the land records of those agricultural fields nor did he collect the same. PW. 6 did not hand over the GD entry related to this case to the I/O of this case.

Appreciation of evidence, discussion, decision and reason thereof

20. Perused the case record. In this case prosecution has examined six witnesses. Let me appreciate the evidence on record.

21. At the outset, during appreciation of prosecution evidence, I do find that the informant, the Investigating Officer and the BL&LRO, Beldanga – II have not been examined by the prosecution, for the reason best known to it and hence the written complaint, seizure list, formal FIR, FSL report and other necessary

documents of this case have not been proved in accordance with law which I am of the view is fatal of the prosecution case.

22. It is the case of the prosecution that SI Subir Kumar Pal [informant] received a secret information on 19.02.2007 to the effect that illegal Opium Poppy plantation was being cultivated by the accused persons at Majlishpur village and thereafter he diarized the said information vide GDE No. 789 dated 19.02.2007 but the said GDE has not been produced or proved by the prosecution in this case, which is fatal for the case of the prosecution.

23. During scrutiny of evidence on record, I also do find that the independent witnesses namely Biman Sk. and Kalu Bitter cited by the prosecution as seizure witnesses in this case have not been examined by the prosecution. It is pertinent to mention here that prosecution has claimed that two independent witnesses, namely namely Biman Sk. and Kalu Bitter were present during search/seizure procedures, however prosecution has not examined them without giving any suitable explanation for such omission which makes the prosecution narrative doubtful.

24. During appreciation of evidence on record, I have also noticed that the oral testimonies of other prosecution witnesses [PW.2, PW.4, PW.5 and PW.6] who were the raiding party members in this case as claimed by the prosecution are not sufficient to prove the accusation against the accused persons herein.

25. It is the case of the prosecution that at the relevant time of conducting raid at the alleged plots, samples were collected by the Investigating Agency for the purpose of sending them to the forensic laboratory for chemical examination report. However the prosecution has not produced or proved those samples so drawn before this court for the purpose of proving its case. I also do find that the investigating agency/IO of this case did not send those samples to FSL laboratory for chemical examination report which is a major procedural flaws in the prosecution case. The prosecution has not produced or proved any such document to that effect so that this Court may draw an inference that samples were sent to the Forensic Laboratory for chemical examination report.

26. On careful perusal of the record, it is evident that there was no effort whatsoever either by the informant cum seizure officer or the then OC, Rejinagar PS to undertake the procedure of sampling and inventory in presence of a Magistrate or a Gazetted Officer in light of the provisions as contained u/S

52A (2) of the NDPS Act which is a major procedural lapses on the part of the Investigating Agency. I also do find that there was no inventory list prepared in this case at the alleged PO during the search/seizure operation. Such procedural lapses on behalf of the Investigating Agency strike at the very root of the prosecution case regarding the genuineness of the seizure and made sampling process wholly doubtful.

27. I also do find that seizure officer cum informant did not prepare any separate seizure list for the samples drawn from the contraband substance. Likewise, no 'test memo' or 'weightment chart' or inventory list was prepared at the alleged PO. Apart from that no specimen seal memo was proved by the prosecution.

28. It is settled law that non-drawing of samples of seized poppy plants with flowers, stems and fruits in light of the standing Order No. 1, 1989 and the complete non-compliance of Section 52A of the NDPS Act makes the entire procedure of seizure and sampling a total farce and thereby unworthy of reliability of such evidence, if any. Such procedural lapses on behalf of the Investigating Agency strike at the very root of the prosecution case regarding the genuineness of the seizure and made sampling process wholly doubtful.

29. From perusal of the evidence of prosecution witnesses, it transpires that the prosecution has not been able to produce or prove the mother contraband substance as well as samples before this Court in absence of compliance as mandated under Section 52A (2) of the NDPS Act for the reason best known to it. It also transpires that no such document from the side of the prosecution has been produced or proved by the prosecution before this court which creates doubt regarding the truthfulness of the prosecution story.

30. During appreciation of prosecution evidence on record, I have also found that there is no document pertaining to land records of alleged plots which could show that the accused persons herein are the landholders of the agrarian fields wherein poppy plantation was illegally cultivated by the accused persons or the accused persons herein had information of such illegal cultivation and they knowingly neglected to give such information to any officer of the police or any the departments mentioned in Section 42 of the NDPS Act.

31. Be it mentioned here that it is the cardinal principle of Criminal Jurisprudence that an accused is presumed innocent, until he is proven guilty, and the burden lies on the prosecution to prove its case beyond reasonable doubt. However, I do find that prosecution has not discharged its liability to prove its case satisfactorily and in consequence thereof benefit of doubt goes in

favour of the accused persons and the accused persons are entitled to be acquitted from this case.

32. In light of the discussions made herein above, I am of the opinion that prosecution has miserably failed to prove its case beyond reasonable doubt against the accused persons and the accused persons are entitled to be acquitted from this case.

Hence, it is

ORDERED

that accused Sushil Mondal, Bipad Bhanjan Mondal, Lokman Mondal @ Lakshman Mondal, Biswanath Mondal, Hiren Biswas, Paresh Biswas, Ashalata Mondal @ Doman Mondal, Sudhakar Nandi, Dibakar Nandi, Panchanan Saudagar and Chittaranjan Mondal are found not guilty of the charge u/S. 18/46 of the N.D.P.S Act and they are acquitted as per Section 258 (1) BNSS, 2023 / Section 235 (1) of Cr.P.C.

Accused persons are on bail. They be discharged from their bail bonds in connection with this case and set at liberty, subject to filing a bail bond of Rs. 2000/- each, with one surety of like amount, subject to the satisfaction of this Court, as per Section 481 of BNSS, 2023 / Section 437-A of Cr.P.C. The bail bonds shall remain in force for six (6) months to appear before the Hon'ble High Court in the event of any appeal against the Judgment.

Seized articles/alamats be confiscated to the State and disposed of as per rule after expiry of period of appeal.

Dictated & Corrected by me,

Sd/-
Judge.
(J.O. Code : WB 01303)

Sd/-

Additional District & Sessions Judge,
2nd Court, Cum,
Judge, Special Court, N.D.P.S. Act,
Berhampore, Murshidabad.
(J.O. Code : WB 01303)