

In the Court of the Additional District & Sessions Judge
Judge, Special Court,
3rd Court, Malda.



Present: Monodeep Dasgupta
Judge, Special Court,
3rd Court, Malda.
Malda (WB00967)

SPL : 86/2023 (CIS : 86 of 2023)

ST: 30 of 2022 (CNR: WBML01-005639-2023)

Under Sections 21(c)/29 of NDPS Act' 1985 r/w Section 14 (A) of
Foreigners Act

State

---- Versus---

Mehendi Hassan

..... Accused person

Judgment dated this 06th day of May, 2026

: J U D G M E N T:

FIR No: 1482/2023 dated 08.09.2023 of English Bazar PS.

Complainant	State of West Bengal
REPRESENTED BY	Ld. Special Public Prosecutor Amitava Moitra
ACCUSED	Mehendi Hassan
REPRESENTED BY	Ld. Advocate Debjyoti Sinha

FORM B

Date of Offence	08.09.2023
Date of FIR	08.09.2023
Date of Charge Sheet	29.02.2024
Date of Framing Charges/Plea	15.04.2024
Date of commencement of Evidence	14.06.2024
Date on which judgment is reserved	----
Date of the judgment	06-05-2026
Date of the Sentencing order, if any	06-05-2026

Accused Details:

Rank of the accused	Name of the accused	Date of arrest/surrender	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.	Mehendi Hassan	09.09.2023	In custody	u/s 21(c) of NDPS Act r/w Sec 14 (A) of Foreigners Act	Acquitted u/s 235 (1) CrPC for the offence punishable u/s 21 (c) of NDPS Act Convicted u/s 235(2) of the CrPC for the offence punishable u.s 14 A of the Foreigners Act	Simple imprisonment for three years for the offence punishable u/s 14(A) of Foreigners Act in accordance with section 235(2) of Cr.P.C. Fine of Rs.10,000/- to the convict is also imposed and in default of payment of fine, the convict shall undergo simple imprisonment for a period of one month for the offence punishable u/s 14(A) of Foreigners Act .	

Form C**LIST OF PROSECUTION/DEFENCE/COURT WITNESSES****A. PROSECUTION**

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT EYE WITNESS, MEDICAL
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		WITNESS, PANCH WITNESS, OTHER WITNESS)
1.	Md Ramzan	Eye Witness
2.	BD Bosnet	BSF Witness
3.	LASI Maya Choudhury	Police Witness
4.	Rahul Kumar	Complainant
5.	SI Jhoton Prasad	Police Witness

B. DEFENCE WITNESSES, IF ANY:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
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LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS**A. Prosecution**

Serial Number	Exhibit Number	Description
1.	Ext P1/PW1	Signature of PW1 on the re-seizure
2.	Ext P1/2/PW2	Signature of PW2 on the re-seizure
3.	Ext P 2/1 /PW2	Seizure Memo dated 08.09.2023
4.	Ext P3 /PW 3	Signature of PW3 on the re-seizure
5.	Ext P4 /PW4	Written complaint
6.	Ext P5 /PW4	Signature of PW4 on the re-seizure
7.	Ext P6 /PW4	Signature of PW4 on the re-seizure memo
8.	Ext P4/1 /PW 5	Receiving Endorsement over written complaint
9.	Ext P6/1 /PW5	Re-seizure list
10.	Ext P7 /PW5	Rough sketch map
11.	Ext P9 /PW5	Report of CFSL, Kolkata dated 09.01.2024
12.	Ext P10 /PW5	Certificate issued by Ld JM, 3rd Court, Malda

B. Defence

Serial Number	Exhibit Number	Description
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C. Court Exhibits

Serial Number	Exhibit Number	Description
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D. Material Objects

Serial Number	Material Object Number	Description
I.	MOI/PW4	Signature of PW4 on the label of mobile
II.	MOII/PW4	One Mobile Phone
III.	MOIII/PW4	Label of currency note
IV.	MOIV/PW4	Currency note
V.	MOI/1/PW5	Label of Mobile phone

Vide this judgment, this Court shall decide the present case under section **21(c) of the NDPS Act R/w Section 14(A) of Foreigners Act.**

The facts forming the gist of the criminal case lodged against the accused person is required to be discussed in brief to understand the entire controversy, however before narrating the facts, it is pertinent to mention that in the present case, the accused person **Mehendi Hassan**, was sent up for trial.

Process of law was set in motion on a written statement made by which led to the registration of a FIR bearing No. 1482/2023 dated 08.09.2023 at about 14.25 hours with English Bazar PS.

The Prosecution Narrative

The warp and weft of the case of prosecution is as under:-

The brief facts as unraveled from the typed complaint dated 08.09.2023 submitted by SI Rahul Kumar 'A' company 70 Bn BSF before the IC English Bazar PS is that on 07.09.2023 a specific information regarding likely smuggling attempt from the gap of International Boundary Border Fence (IBBF) and boundary wall of BOP Mahadipur BSF was received by him. After receipt of the information the informant along with HC Md Ramzan, ASI S Kandir and CT B.D. Bosnet laid a special ambush at fighting bunker no. 2 situated at the parking side of the North West direction of BOP from 2200 hours to 0200 hours. The informant has further stated that about 00.25 hours on 08.09.2023 the ambush party observed that 4/5 miscreants from the side of Indian Territory came near the fencing and threw two potlas towards Bangladesh side over the fence. Thereafter 2/3 miscreants from Bangladesh side reached the border fence and collected the said potlas of contraband items and tried to flee away to Bangladesh

side. The informant has further stated that at that time the ambush party rushed towards fighting bunker no. 3 (North Eastern direction of the BOP). The informant has further stated that he along with HC Md Ramzan climbed over the bunker and thereafter jumped from it to apprehend the BD smugglers. The informant has further stated that the accused above named being one of the smugglers, tried to flee away with two potlas but after being apprehended by Md Ramzan, he beat his hand when he tried to caught hold of him as a result of which Md Ramzan sustained cut injuries on the fingers of his left hand and the thumb of his right hand. The informant has further stated that in the meantime the other smugglers managed to flee away from the spot taking advantage of the mango garden and poor visibility at night. The informant has further stated that at about 0055 hours he informed the matter to his superior Kapil Manish Chaturvedi, AC, A COY, 70 BN, BSF over handset and about 0125 hours he arrived at the spot. The accused disclosed his name and address to him and on search of the potlas, 1. one blue colour sack containing four plastic packets wrapped with sellotape containing 25 no. of Chlorpheniramine Maleate & Copdeine Phosphate Cough Linctus phensedyl in each bottle valued at 186.80 total bottle 25X4= 100, 2. one red colour sack containing six plastic packets wrapped with celotape containing 25 no. of Chlorpheniramine Maleate & Copdeine Phosphate Cough Linctus phensedyl in each bottle valued at 186.80 total bottle 25X6= 150, 3. mobile phone of Vivo Y 31 with two sim, 4. one BD currency Note of Denomination 200 were recovered from his possession. He seized the same under proper seizure list in presence of BSF witnesses and label it. Then he arrested him and gave him a copy of memo of arrest and also informed him the ground of his arrest. The informant has further stated that The whole process of search, seizure and arrest were made in between 0145 hours to 0500 hours. Then the accused along with all the seized articles were brought to BSF office camp. The informant has further stated that during interrogation accused Mehendi Hassan stated that he contracted with their Indian agent through his Indian Airtel Sim and his Indian associates and gave the phensedyl to him and he would sell the same to his Bangladeshi agent clandestinely.

On the basis of the typed complaint, the investigation machinery was set into motion, and English Bazar PS case no: 1482/2023 dated 08.09.2023 u/s 21(c)/29 of the NDPS Act R/w Section 14(A) of Foreigners Act was started against the FIR named accused person namely Mehendi Hassan, and SI Jhoton Prosad of English Bazar PS was endorsed with the investigation. The completion of investigation culminated into submission of charge-sheet against the accused person for the offences punishable u/s- 21(c)/29 of the NDPS Act R/w Section 14(A) of Foreigners Act.

Accordingly, cognizance of the alleged offences against the accused person was taken

by this court on 04.03.2024. After hearing the Learned Special Public Prosecutor for the State as well as Learned Defence Counsel, a charge was framed against the accused person for the offence punishable u/s 21(c) of the NDPS Act R/w Section 14(A) of Foreigners Act on 15.04.2024 and he was asked whether he pleaded guilty.

The accused person abjured guilt, thereby did not plead guilty to the charges and claimed to be tried. Accordingly, he was put on trial.

The prosecution, in order to substantiate its case, marshalled in the witness-box 05 witnesses. Several documents and material objects were exhibited at the course of this instant trial, which shall be adverted to at the relevant stages.

When the prosecution concluded its evidence, the sole accused person was examined u/s 313 of the Code of Criminal Procedure 1973 (for short "the Code"), wherein the incriminating evidence were put to him to which he replied that all allegations against him are incorrect, and the statements given by the PWs are false and fabricated. He claimed false implication by the PWs. In short, the defence contention was a bare denial of the prosecution case *in limini*, that he was innocent, had no complicity with the crime, was falsely implicated. The accused person was called upon to lead evidence if any. The accused person submitted that he has no evidence to lead on his side.

The matter was then posted for final arguments. Oral submissions were placed on behalf of both the prosecution and the defence.

: POINTS FOR DETERMINATION:

- 1) Whether the accused person, on 08.09.2023 at about 0200 hours at AOR of BOP Mahadipur under PS English Bazar, District Malda was found in possession of 257 bottles of phensedyl without any valid authorization ?
- 2) Whether the accused person, being a National of Bangladesh, on 08.09.2023 at about 0200 hours at AOR of BOP Mahadipur under PS English Bazar, District Malda entered into and stayed in India without having any valid documents?
- 3) Whether the prosecution story is worth credence and whether the prosecution has been able to establish the charge against the accused person beyond all reasonable pales of doubt?

DETERMINATION WITH REASONS

- 1) Let us scan through the evidence adduced by the prosecution in the following paragraphs in order to reach a judicially acceptable determination.

2) All the points for determination are taken up together for brevity and convenience of discussion.

Commencement of hearing and delineation of contentions

1) Ld. SPL PP in charge of this case argued that prosecution has been able to prove the seizure of 257 bottles of phensedyl bottles which were illegally possessed by the accused person and the chemical examination report supports the prosecution claim that the seized substance was phensedyl. It was argued that testimony of each of BSF personnel examined in the court is consistent and corroborative to each other. He also argued that recovery of phensydl bottles were made from the accused person and the minor contradictions, if any, in the testimony of witnesses are liable to be ignored. It is argued that prosecution has been able to prove the charge against the accused person and he is liable to be convicted for the offence u/s 21(c) of the NDPS Act R/w Section 14(A) of Foreigners Act. It is contended that all the procedural requirements under [NDPS Act](#) have been complied with in the present case. Furthermore, accused was a Foreign National thus he is also liable to be convicted for commission of offence U/s 14 of the [Foreigners Act](#).

2) In reply Ld. advocate for the accused person argued that prosecution has miserably failed to prove the charge against the accused person. It is further strenuously argued that the prosecution has miserably failed to bring home the guilt of the accused beyond reasonable doubt as the total evidence adduced is nothing but short of unreliable and inconsistent bucket of evidence, wherein the alleged commission of crime is absolutely surrounded by doubts and dust. He further argued that perusal of the records highlights blatant failure of compliance of the mandates of a strict penal statute i.e. [NDPS Act](#) and directions laid down therein. A summary of the available impeachable evidence is laid down as under so as to prove the innocence and clandestine operations of agencies contrary to rights/ duties bestowed by the statute. He further argued that compliance of [section 41/42](#) and [50](#) NDPS Act has not been done during investigation. It is pointed out that there are serious contradictions in the testimony of BSF personnel qua recovery procedure. Thus, the recovery proceedings have been vitiated and cannot be relied upon. Ld Counsel on behalf of the accused person further submitted that there was non compliance of section 41, 42 and 57 of the NDPS Act. On the above scores it was submitted by the Ld Defence Counsel that the prosecution case suffers from serious infirmities for which the accused person is entitled to acquittal for the charges u/s 21 (C) of the NDPS Act for the reason that the charges against him have not been proved beyond all reasonable doubts.

3) This Court now examines the arguments raised by Ld. Counsels *in extenso*. In order to address the rival contentions, this Court at the first instance, considered the entire evidence on record in a proper perspective. Ld. Counsel for the accused person took this Court through the evidence of each and every witness and submitted that the evidence of the witnesses were contradictory to each other as regard some vital aspects of the prosecution story. Ld. Counsel for the accused person referred to various lines of the witnesses to point out contradictions in their evidence on some of the material aspects of the occurrence and submitted that it is absurd to accept that the accused person have committed the alleged offences. Ld. Defence Counsel on behalf of accused person has argued that the accused person have been falsely implicated and the story of the prosecution seems to be improbable for the reason that the testimonies of the PWs cannot be relied upon. On the other hand, Ld. Special Public Prosecutor contended that a string of consistency runs through the evidence of the PWs who came forward in support of the prosecution story, and they did not appear materially faltering at any particular point so as to create any defect in the prosecution case.

4) That brings this Court to the substance of the prosecution case which essentially comprises of the depositions of PW1 to PW5. For a profitable discussion and for a proper grasp of the entire prosecution as well as the defence case, this Court is of the view that it would be appropriate to set out and trace the outline of the five witnesses examined by the prosecution. Having dealt with the submissions advanced by both the sides, this Court proceed to adjudicate upon the most important question involved in the present case: whether the accused person is guilty of the offences with which he has been charged or not.

5) **PW1 Md Ramzan** stated in his evidence that on 08.09.2023 while he was posted at BOP, Mahadipur as Head Constable and was in shifting duty in the night at about 12.00 hours, it came to their notice that two persons were coming towards Bangladesh Border from the Indian side. PW1 further deposed that thereafter they noticed two packets (bag) were thrown from Indian side towards Bangladesh and at that time two persons came from Bangladesh side to pick up those bags. PW1 further deposed that he informed Constable BD Bosnet and at that time being assistant by constable, he jumped from Centry post and could able to catch hold one of them while another fled away. PW1 further stated in his evidence that due to jumping from the Centry post, he sustained slight injury on his hand and thereafter constable BD Bosnet came there to assist him. PW1 further stated in his evidence that at that time the matter was informed to Company Commander KP Chaturvedi. PW1 further stated in his evidence that Assistant Commander came there and the person was caught possession red colour bag containing six packets and each packet contained 25 numbers of phensedyl bottles. PW1 further stated in his evidence that total 150 bottles of phensedyl were recovered and further deposed that another blue colour packet was found from his

possession containing four packets each containing 25 numbers of phensedyl bottles containing total 100 bottles. PW1 further stated in his evidence that another seven numbers of bottles were found in a open plastic bag. PW1 further stated in his evidence that all those bottles totally 257 numbers of bottles containing 100 ml in each bottle were recovered and sealed under proper seizure list at the spot. PW1 further stated in his evidence that on being asked the accused disclosed hisnames Mehdi Hassan. PW1 further stated in his evidence that that the accused were also found possessing one personal mobile and BD currency amounting to 200. PW1 further stated in his evidence that they were seized under proper seizure list at the spot and the accused were arrested there.

6) **PW2 BD Bosnet** stated in his evidence that on 08.09.2023 while he was in border duty at BOP Mahadipur as constable, at that night at about 12.00 hours PW1 told him to come to the Border as there was some incident and to assist him. PW2 BD Bosnet further stated in his evidence that he went there and found one accused was caught hold by PW1 and thereafter this matter was informed to their company commander. PW2 BD Bosnet further stated in his evidence that the company commander came and some quantity of phensedyl containing 2 bags out of which the red colour bag contained 6 packets of 25 numbers bottles in each totaling 150 bottles of phensedyl. PW2 BD Bosnet further stated in his evidence that in the blue colour bag four packets were found containing 25 numbers of phensedyl in each packet totaling 100 number and in another packet 7 numbers of bottles were found and recovered. PW2 further deposed in his evidence that one mobile phone and BD currency of Rs 200 were found to his possession and were seized by their company commander under seizure memo. 8 .Q. PW2 further deposed in his evidence that the accused were arrested on the spot and he came to know hisname at the course of interrogation by company commander. Ext P/1 and P1/2, the signatures of PW1 and PW2 on the seizure list shows that 257 bottles of phensedyl, one mobile phone with two SIM cards and one BD currency note of Rs 200 were recovered from the possession of the accused person.

7) **PW3 LASI Maya Choudhury** stated in her evidence that on 08.09.2023 while she was posted at EBPS on GD duty at that moment some BSF personnel came to the PS along with 257 bottles of phensedyl, BD currency notes of 200, one VIVO mobile phone along with 2 SIM cards and the accused . PW3 further deposed that she informed IC, EBPS and at around 4.00 pm of 08.09.2023 as per direction of IC, EBPS the investigating officer ASI Jhoton Prosad re-seized those articles and she put her signature on the re-seizure list. Ext P/3 the signature of PW3 on the re-seizure list shows that 257 bottles of phensedyl, one mobile phone with two SIM cards and one BD currency note of Rs 200 were recovered from the possession of the accused.

8) **PW4 Rahul Kumar** being the informant stated in his evidence that on 07.09.2023 he was told by the company commander Kapil Manish Chaturvedi to ambush from

10.00 pm to 2.00 pm on 07.09.2023 at Bunker No. 2 at Mahadipur BOP. PW4 further deposed in his evidence that he was accompanied by ASI Kandir, PW1 and PW2 in the ambush and at around 12.30 am on 08.09.2023 they noticed a movement from Indian Side. PW4 further deposed in his evidence that some miscreants came from Indian Side and threw some potlas over the fencing towards Bangladesh side. PW4 further deposed in his evidence that there was also some movement at Bangladesh side and 3 /4 miscreants from Bangladesh side picked those potlas from Indian side and ran away towards Bangladesh side. PW4 further deposed in his evidence that PW1 notice the matter first and rushed to the Bunker no. 3. PW4 further deposed in his evidence that he along with PW2 followed PW1. PW4 further deposed in his evidence that that PW1 thereafter climbed over the bunker and jumped towards Bangladesh side. PW4 further deposed in his evidence that when they reached there, they were able to capture one of the miscreant but the rest miscreant fled away taking advantage of the darkness. PW4 further deposed in his evidence that when PW1 tried to catch the miscreants, they gave bite on his hand. PW4 further deposed in his evidence that while PW1 was struggling with the miscreant at that time he neutralized both of them and apprehended the miscreants. PW4 further deposed in his evidence that thereafter he informed the company commander who came to the spot and interrogated the accused after the accused disclosed his name. PW4 further deposed in his evidence that two bags were recovered from from the possession of the accused . One blue colour bag and the other was red. PW4 further deposed in his evidence that four packets of phensedyl were recovered from the blue bag each containing 25 bottles. PW4 further deposed in his evidence that six packets of phensedyl were recovered from red bag containing 25 bottles. PW4 further deposed in his evidence that beside the phensedyl bottles, one VIVO smart phone, one BD currency note of 200 were also recovered. MOII, shows that one Smart phone was recovered from from the possession of the accused. MOIV, shows that one BD currency note of 200 was recovered from from the possession of the accused.

9) **PW5 SI Jhoton Prasad** deposed in his evidence that the course of investigation he re-seized the alamat and collected all the relevant documents in connection with this case as produced by the BSF personnel. PW5 further deposed that he labeled and seized the articles, prepared arrest memo, examined witnesses and recorded their statements under 161 CrPC, visited the PO, prepared rough sketch map along with index and forwarded the accused before the Ld Court. PW5 further deposed in his evidence that he prayed for his police remand which was allowed for four days. PW5 further deposed that he submitted a prayer for inventory which was allowed and the inventory was done before the Ld Judicial Magistrate, 3rd Court, Malda and photographs were taken. PW5 further deposed that he prepared the labels and during his investigation he sent message to SP (DIB), Malda for his CA verification. PW5

further deposed that he collected CDR of his mobile number and sent the collected samples to CFSL, Kolkata. PW5 further deposed in his evidence that after re seizure of the contraband, he handed over the same to the In charge of the Central Malkhana, Malda Police line and subsequently produced the contraband before the Ld Judicial Magistrate, 3rd Court, Malda from Central Malkhana for the purpose of inventory. PW5 further stated that after inventory he sent the samples to CFSL, Kolkata for examination and returned the contraband to the Central Malkhana, Malda. PW 5 further deposed in his evidence that during his investigation he collected copy of the GD register of BSF, 70 BN, duly certified to be true by Company Commandant 'A' COY 70 BN BSF. PW 5 further deposed in his evidence that he also collected report from CFSL Kolkata and submitted charge sheet against the accused vide no 201 dated 29.02.2024 u/s 21 (c)/29 of NDPS Act r/w section 14(A) of Foreigners Act. Ext 6/1, shows that a re-seizure list of the contraband articles along with his mobile phone, BD currency note of Rs 200/- was re-seized by PW5 at the course of his investigation.

10) The profile of the prosecution case has already been gleaned through. It would be now required for this Court to assess the submissions of Ld. Counsels for the accused person on the anvil of the evidence on record seen by this Court in the backdrop of the reservations of Ld. Public Prosecutor for the State who has argued that the case of the prosecution has been duly proved and the only irresistible conclusion that can be drawn from the prosecution's evidence is the conviction of the accused person.

APPRECIATION OF THE ORAL AND DOCUMENTARY EVIDENCE

11) Ld. Counsel for the accused person contended that PW1, being the informant as well as the seizing officer, did not comply with the mandatory provisions of [Sections 42, 50, 52](#) and [57](#) of the NDPS Act at the time of the alleged seizure. He further contended that the informant and the Investigating Officer have falsely implicated the accused person in the crime in order to save the real culprit.

Learned Spl PP vehemently contended that the PWs have categorically stated against the accused person about the possession of 257 bottles of phensedyl along with one mobile phone and BD currency note of denomination of 200. Further, PW1 has complied with the mandatory requirements of [Sections 42, 50, 52](#) and [54](#) of the NDPS Act. Hence, there was no error on the part of the Investigating Officer or raiding party in con The accused who was apprehended and faced trial is a Bangladesh National who entered into and stayed in India without any valid documents. Hence, there is no finding fault in this regard and on the basis of the materials available on record, a

presumption under [Section 54](#) of the NDPS Act in favour of the prosecution can be taken and accordingly both the accused person deserve to be convicted.

12) It is the established propositions of law that, as the "offences under the [N.D.P.S. Act, 1985](#) are attracting severe punishments, therefore, it requires strict proof for proving search, recovery and seizure.

13) [As the N.D.P.S. Act, 1985](#) is a presumptive legislation, provisions thereof need to be interpreted strictly. Therefore, the officer conducting search, recovery, seizure and arrest under the [N.D.P.S. Act, 1985](#) is bound to follow the procedures envisaged under law and he cannot act as per his own suit will, whim and fancy. Because, the stringent punishments prescribed under the [N.D.P.S. Act, 1985](#) commands from the prosecuting agency to follow mandate of law properly, failing which, prosecution is to be rejected out-rightly.

So keeping the above settled propositions of law in mind, the prosecution charges under [Section 21\(C\)](#) of the N.D.P.S. Act is to be dealt with.

14) [Section 42](#) of the N.D.P.S. Act provides the powers of the Searching Officer regarding the search, seizure, arrest and the compliances thereof.

[Section 50\(6\)](#) of the N.D.P.S. Act provides the duties of the Arresting Officer to comply.

[Sections 52](#) and [55](#) of the N.D.P.S. Act provide provisions relating to the dealing up of the seized articles and as well as the arrested persons.

[Section 57](#) of the N.D.P.S. Act provides the procedures to be complied by the Arresting Officer after arrest and seizure.

15. Out of the above provisions envisaged in the [N.D.P.S. Act, 1985](#), the compliance of the provisions under [Sections 42](#) and [50](#) of the N.D.P.S. Act, 1985 are mandatory and compulsory in nature.

16) The nature and manner of compliances of the provisions of [Section 42](#) of the N.D.P.S. Act has already been clarified by the two following Constitution Bench decisions of the Apex Court;

(2009) 44 OCR (SC)--183 Karnail Singh vrs. State of Haryana (Five Judges Bench)

(2020) 8 OCR (SC)-- Tofan Singh vrs. State of Tamilnadu, wherein it has been clarified that:-

"[N.D.P.S. Act, 1985--Section 42](#) power of entry, search, seizure and arrest without warrant or authorization-- the officer on receiving the information from any person of the nature referred to in Sub-section(1) of [Section 42](#) had to record it in writing in the concerned register and forthwith send a copy thereof to his immediate official superior,

before proceeding to take action in terms of clauses-1(a) to (d) of [Section 42 \(1\)](#).

17) If the information was received, when the Officer was not in the police station, but while he was on the move either on patrol duty or otherwise, 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 the information given to him and in such a situation, he could take action as per clauses(a) to (d) of [Section 42\(1\)](#) and thereafter as soon as it is practical, record the same in writing and forthwith inform the same to the official superior.

18) In regard to writing down the information receive and sending copy thereof to the superior officer, it would normally precede the entry, search and seizure by the officer, but in special circumstances involving emergent situation, the recording of information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period.

19) Total non-compliance of Sub-section(1) and (2) of [Section 42](#) is impermissible, but delayed compliance with satisfactory explanation about the delay will be an acceptable compliance of [Section 42](#).

20) If the information was received, when the police officer was in the police station with sufficient time to take action and if the police officer fails to record in writing the information received or fails to send a copy thereof to the official superior, then it would be a suspicious circumstance being a clear violation of [Section 42](#) of the Act."

21) [Section 50\(6\)](#) of the N.D.P.S. Act provides that after a search is conducted under Sub-section(5), the officer shall record the reasons of such believe which necessitated search and within 72 hours send a copy thereof to his immediate official superior.

22) [Section 57](#) of the N.D.P.S. Act provides that whenever any person makes any arrest or seizure under this Act, he shall within the 48 hours next after such arrest or seizure, make a full report of all the particular of such arrest or seizure to his immediate official superior.

23) P.W.1 has not also stated anything in his evidence about the sending up of any report regarding the search, recovery, seizure to his immediate official superior in any day after completion of search, recovery, seizure. There is no explanation at all on behalf of the prosecution about the cause and reason of non-compliance of the provisions of [Section 42](#) of the N.D.P.S. Act.

24) It has been vividly clarified in the ratio of the aforesaid decisions of the Apex Court that, the total non-compliance of Sub-section(1) and (2) of [Section 42](#) of the N.D.P.S. Act is impermissible under law but delayed compliance with satisfactory explanation about the delay will be an acceptable compliance of that Section.

25) Here, in this case at hand, when the two bags thrown towards Bangladesh Border from Indian Side and two packets were thrown from Indian Side towards Bangladesh and at that time two persons came from Bangladesh side to pick up those bags, the same was noticed by the P.W1, he informed PW2 B.D. Bosnet but did not inform his immediate superior PW4 Rahul Kumar. The information was also not noted down in writing and the copy was sent within 72 hours to PW4 according to Section 42 (2) of the NDPS Act. There was sufficient time with him to send the copy of his recorded information to his immediate official superior and when there is no material in the record to show about the compliance of the above mandatory provisions of [Section 42](#) of the N.D.P.S. Act, then the above conduct of P.W.1 itself is going to show that, there is clear violation and the total non-compliance of the mandatory provisions of [Section 42](#) the N.D.P.S. Act, 1985.

26) On this aspect, the propositions of law is very much clear that, when the compliance of the provisions of [Section 42](#) of the N.D.P.S. Act are compulsory and mandatory, then the failure to comply with the requirements of that [Section 42](#) seriously affects the prosecution case and ultimately, vitiates the trial.

27) As per settled provision of Section 42 of the NDPS Act, the concerned officer including officer of Paramilitary forces or armed forces, to whom the secret information was received, is required to inform his immediate senior officer immediately about the secret information and sent the information so reduced into writing within 72 hours of its receipt to Superior officer. It appears from Ext P/4, the typed complaint dated 08.09.2023 submitted by PW4 before the IC EBPS is that a specific information on 07.09.2023 regarding lightly smuggling attempt from the gap of International Boundary Border Fence (IBBF) and boundary wall of BOP, Mahadipur BSF was received by him. It is further found from the cross-examination of PW4 that after receiving the information of the alleged smuggling attempt he did not make any entry in the GD book. Therefore it can be noticed that there was failure by PW4 the information in writing and he did not sent the report to the empowered officer of a Gazetted rank in violation of Section 42 of the NDPS Act. It is found that there is total non compliance of section 42 of the NDPS Act. Total non-compliance with subsections 1 and 2 of section 42 is impermissible. In this instant case the information was

received by PW4 when he was in his office and not on patrolling duty and he has sufficient time to take action. PW4 failed to record in writing the information received and failed to send a copy thereof to the official superior and it is therefore a suspicious circumstance being a clear violation of section 42 of the NDPS Act. Thus in the present case requirement of the section 42 of the NDPS Act has not been duly complied with.

28) Further in the present case there is no compliance of [section 57](#) NDPS Act. Ld. Special PP for the State has submitted that compliance of [section 57](#) NDPS Act is not mandatory. This Court agrees to this contention of the Ld. Special PP for the State but is of the considered opinion that though the compliance of [section 57](#) NDPS Act is not mandatory but still the non compliance of [section 57](#) NDPS Act without any explanation is fatal to the case of the prosecution. The purpose of [section 57](#) NDPS Act is that the superior officers should know that what their subordinate staff is doing and no innocent person is implicated for the offence under [NDPS Act](#). SI Jhoton Prosad the IO of the case during his cross examination by the Ld. Counsel for the accused persons has deposed that he did not collect any document showing compliance of section 41, 42 and [section 57](#) NDPS Act. This clearly suggest that there is no compliance of section 41, 42 and [section 57](#) NDPS Act. 1985 in the present case and there is no reasonable explanation for non compliance of section 41, 42 and [section 57](#) of NDPS Act. Act 1985. Non compliance of [section 57](#) NDPS Act without any reasonable explanation is fatal to the case of the prosecution.

29) In the absence of any proof of cultivation by these accused, they cannot be pinned with any criminal liability. In the case on hand, though this Court accepts the evidence of the prosecution witnesses that phensedyl bottles were recovered but still there is no proof forthcoming from the prosecution to establish that the accused were in exclusive possession of them.

30) Another allegation against the accused that he being a National of Bangladesh(Foreign National), was not having a valid Visa for staying in India on the date of his apprehension. As far as the aspect of the accused being a Foreign National, there is no dispute. Meaning thereby, the accused is not a citizen of India and once it is proved and admitted by the accused that he is a foreigner being a Bangladesh National and came to India, then the burden shifts upon accused as per Section 106 of the Indian Evidence Act to place on record the document which authorizes him to be remain in India validly.

31) It is not the case of the defence that the accused got any Visa for his arrival in India for any duration at any point of time. The accused was apprehended and arrested on 08.09.2023 at about midnight when he along with another miscreants came from

the Bangladesh side to pick up the two bags which were thrown from the Indian side. So, the onus was upon the accused to prove the fact that he came to the Indian side with valid documents. However, the accused has failed to discharge the burden of onus as per section 106 of the Indian Evidence Act. Hence, the accused was staying in the Indian territory without any valid document/Visa on 08.09.2023. He remained silent in this regard.

32) In the light of the aforesaid findings, observations and reasoning, this Court of the considered opinion that the prosecution has been able to prove its case beyond all reasonable pales of doubt against the accused Mehendi Hassan for the offence punishable u/s 14 A of the Foreigners Act. The accused is found guilty for the offence u/s 14 A of the Foreigners Act and convicted accordingly. The accused is acquitted for the offence punishable u/s 21 (c) of the NDPS Act.

33) Thus, the above points under determination, are therefore answered in the affirmative to the extent as above. The convict Mehendi Hassan to be heard on the point of sentence today at 2.00 pm.

Judge, Special Court,
3rd Court, Malda
J.O. CODE WB00967

Sentence hearing (later 06.05.2026)

34) The convict **Mehendi Hassan** is communicated the substance as above in open Court in presence of his Ld. Counsel. The Ld. Counsel is heard on the point of sentence to be awarded. Ld. Public Prosecutor is heard on the question of sentence. Ld. Special Public Prosecutor has submitted that the maximum punishment for the offence punishable u/s14 A of the Foreigners Act is up to five years and that the convict having being found staying in India without any valid documents should be sentenced to maximum imprisonment. He further submits that heavy fine be also imposed upon the convict under the offending section he is found guilty.

The Ld. Counsel for the convict is also given an opportunity to present his version regarding the quantum of punishment. He avails the same and submits that apart from this case, the convict is not involved in any other case and he has therefore prayed that a lenient view be taken against him and he be sentenced to minimum imprisonment, i.e. period undergone by him and he be imposed minimum fine. The version of the convict and his Ld. Counsel is that of false implication. The convict has submitted that he is innocent. Considered the age, family background and economical position of the convict. This Court has taken into consideration the nature and gravity

of the offence, conduct of the convict during trial and prior to trial during investigation and inquiry.

35) To afford an effective opportunity to the convict, the Court has heard on the question of sentence to know about (i) age of the convict; (ii) background of the convict; (iii) prior criminal antecedents, if any; (iv) possibility of reformation, if any; and (v) other relevant factors. The convict stated that he hails from an ordinary/ poor background and is not much educated. Convict has also stated that he has maintained good behavior while she was lodged at the Correctional Home.

36) This Court has given a careful consideration to the submissions made by Ld Special PP and the convict. Keeping in view that this convict has not been found guilty of having committed any offence under NDPS Act and also taking into consideration that he has no previous criminal antecedents, and he has already spent almost three years in Judicial Custody, this Court is of the considered opinion that the convict cannot be sentenced to suffer simple imprisonment for five years for the offence punishable u/s 14A of the Foreigners Act.

37) It is also made clear that since the convict has been acquitted of the offence punishable u/s 21 (C) of the NDPS Act, the State, in view of the special provisions of the Foreigners Act, which lay down special guidelines, a foreign national acquitted by a Court of India is not to be detained for an unnecessarily long period and that the prosecution agency is under a duty to inform the FRRO within 21 days of the judgment of acquittal whether it intends to file an appeal against the judgment of acquittal and in case no intimation is given by the prosecution within this stipulated period, the FRRO will be at liberty to deport the foreign national as per the laid down procedure) is hereby directed the convict Mehendi Hassan, who is a Foreign national be released from JC immediately and handed over to FRRO and the FRRO be informed by State within 21 days hereof about its decision to file an appeal against the present judgment vide which the convict has been acquitted for the offence punishable u/s 21 NDPS Act. In case no such intimation is given within a period of 21 days, this convict may be deported as per the provisions of Foreigners Act.

38) Hence, it is

ORDERED

The convict, namely, **Mehendi Hassan** is here by sentenced **to suffer imprisonment for three years** for the offence punishable **u/s 14(A) of Foreigners Act** in accordance with **section 235(2) of Cr.P.C.** Fine of **Rs.10,000/-** to the convict is also imposed and in default of payment of fine, the convict shall undergo **simple**

imprisonment for a period of one month for the offence punishable u/s 14(A) of Foreigners Act .

Both the above mentioned sentences of imprisonment shall run concurrently.

The period of detention undergone by the convict during investigation, inquiry and trial in connection with this instant case shall be set off under Section 428 Cr.P.C.

In respect of seized articles, let the same be confiscated to the State after lapse of the period prescribed for appeal.

The victim **Mehendi Hassan** is informed about about his right to prefer an appeal under proviso to Section 372 of the CrPC against the order of the Judgment of conviction and sentence, and if necessary to avail free legal assistance through the DLSA, Malda to prefer and prosecute such appeal, to which he declined to file an appeal against the Judgment of conviction and sentence.

Let a copy of this judgment be given to the convict free of cost forthwith.

After completion of sentence imposed, the convict **Mehendi Hassan** be pushed back to his Country i.e. Bangladesh after observing all legal formalities.

Seized articles if any be disposed off after the appeal period as per law.

Let a copy of this judgment be sent to the District Magistrate, Malda under Section 365 of Cr.P.C. for his information and necessary action.

Let a copy of this Judgment be also sent to the Superintendent of Police, Malda and to the Superintendent, Malda District Correctional Home for information.

Note in T.R.

Dictated & corrected by me.

(Monodeep Dasgupta)
**Judge, Special Court,
3rd Court, Malda.**

(Monodeep Dasgupta)
**Judge, Special Court,
3rd Court, Malda.**