

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 : 110/23 (CIS : 110 of 2023)
ST: 36 of 2025 (WBML01-007316-2023)

Under Sections 21(c)/29 of NDPS Act' 1985

State

---- Versus---

Aliul Sekh and Rahamat Sekh

..... Accused persons

Judgment dated this 06th day of May, 2026

: J U D G M E N T :

FIR No: 1531/2023 dated 02.12.2023 of Kaliachak PS.

Complainant	State of West Bengal
REPRESENTED BY	Ld. Special Public Prosecutor Amitava Moitra
ACCUSED	Aliul Sekh and Rahamat Sekh
REPRESENTED BY	Ld. Advocate Debajyoti Sinha

FORM B

Date of Offence	02.12.2023
Date of FIR	02.12.2023
Date of Charge Sheet	28.05.2024
Date of Framing Charges/Plea	21.08.2025
Date of commencement of Evidence	28.10.2025
Date on which judgment is reserved	----
Date of the judgment	06.05.2026
Date of the Sentencing order, if any	-----

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.	Aliul Sekh	02.12.2023	In custody	u/s 21(c)/29 of NDPS Act	Acquitted	N.A	N.A
2.	Rahamat Sekh	02.12.2023	In custody	u/s 21(c)/29 of NDPS Act	Acquitted	N.A.	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)
1.	SI Biplab Kr Das	Complainant
2.	SI Anandamaya Saha	Police Witness
3.	SI Ajay Shankar Chowdhury	Police Witness
4.	Constable Mithun Nag	Police Witness
5.	Constable Jagajyoti Singha	Police Witness
6.	SI Urgan Lama	Police Witness
7.	SI Upendra Nath Roy	Police Witness

B. DEFENCE WITNESSES, IF ANY:

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

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution

Serial Number	Exhibit Number	Description
1.	Ext P1	Complaint dated 02.12.2023
2.	Ext P1/1	Endorsement of SI Champak Kr Sinha on the complaint
3.	Ext P2	Copy of notice dated 02.12.2023
4.	Ext P3	Consent letter dated 02.12.2023
5.	Ext P4	Seizure list dated 02.12.2023
6.	Ext P5	Certified copy of GDE no 55 dated 02.12.2023
7.	Ext P6	Authorization letter dated 02.12.2023
8.	Ext P7	Signature of PW4 on the Exhibit challan
9.	Ext P8	Signature of PW5 on the label of Ext A1
10.	Ext P8/1	Signature of PW6 on Exbt A1
11.	Ext P9	Signature of PW5 on the label of Ext B1
12.	Ext P9/1	Signature of PW6 on Exbt B1
13.	Ext P10	Signature of SI Champak Kr Sinha on the formal FIR
14.	Ext P11 (Collectively)	Rough sketch map with index
15.	Ext P12	CFSL report dated 27.05.2024
16.	Ext P13	Inventory Report

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
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Vide this judgment, this Court shall decide the present case under section **21(c)/29 of NDPS Act** .

The facts forming the gist of the criminal case lodged against the accused persons 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 persons **Aliul Sekh** and **Rahamat Sekh** , were 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. 1531/2023 dated 02.12.2023 at about 06.25 hours with Kaliachak 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 02.12.2023 submitted by SI Biplab Kr Das before the IC Kaliachak PS is that on 02.12.2023 at 01.25 hours while he was in Kaliachak PS, he received a secret source information from his reliable source that a huge number of narcotic substance was stored at the house of accused Aliul Sekh and Rahamat Sekh at village Haruchak under PS Kaliachak, District- Malda. The complainant has further stated that after observing all legal formalities, he along with force, all relevant documents, pen, papers, sealing materials, IO kits, electronic weighing machine, mobile, Drug detection kit etc went to the house of the aforesaid accused persons. The complainant has further stated that after reaching to the house of the accused persons and after completing of identification, service of notice, he and force entered into the bed room of Aliul Sk and found his brother Rahamat Sekh and also found two black colour poly packets concealed in the bed room and one black colour poly packet contained 292 grms of brown colour power seems to brown sugar in dry condition and another packet contained 388 grams of brown colour powder seems to be brown sugar in wet condition. The complainant has further stated that with the help of digital weight machine the measurement was made at the spot and all the articles were packed, sealed and thereafter he returned to the PS along with force, both the accused persons and seized articles. The complainant has further stated that thereafter he lodged a typed complaint with Kaliachak PS against the two accused persons namely Aliul Sekh and Rehamat Sekh.

On the basis of the typed complaint, the investigation machinery was set into motion, and Kaliachak PS case no: 1531/2023 dated 02.12.2023 u/s 21(c)/27A/29 of NDPS Act was started against the FIR named accused persons namely Aliul Sekh and Rahamat Sekh, and SI Urgan Lama of Kaliachak PS was endorsed with the investigation. The completion of investigation culminated into submission of charge-sheet against the accused persons for the offences punishable u/s-21(c)/27A/29 of NDPS Act.

Accordingly, cognizance of the alleged offences against the accused persons was taken by this court on 03.06.2024. After hearing the Learned Special Public Prosecutor for the State as well as Learned Defence Counsel, a charge was framed against the accused persons for the offences punishable u/s 21(c)/29 of NDPS Act on 21.08.2025 and they were asked whether they plead guilty.

The accused persons abjured guilt, thereby did not plead guilty to the charges and claimed to be tried. Accordingly, they were put on trial.

The prosecution, in order to substantiate its case, marshalled in the witness-box 07 witnesses. Several documents were exhibited at the course of this instant trial, which shall be adverted to at the relevant stages.

When the prosecution concluded its evidence, both the accused persons were examined u/s 313 of the Code of Criminal Procedure 1973 (for short "the Code"), wherein the incriminating evidence were put to them to which they replied that all allegations against them are incorrect, and the statements given by the PWs are false and fabricated. They claimed false implication by the PWs. In short, the defence contention was a bare denial of the prosecution case *in limini*, that they were innocent, had no complicity with the crime, were falsely implicated. The accused persons were called upon to lead evidence if any. The accused persons submitted that they have no evidence to lead on their 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 persons on 02.12.2023 at about 03.05 hours at Village Haruchak under PS Kaliachak, District- Malda possessed 292 grams of brown sugar in dry condition and 338 grams of brown sugar in wet condition, being of commercial quantity, without any valid authorization at their house in contravention of the provision of the NDPS Act ?
- 2) Whether the accused persons on 02.12.2023 at about 03.05 hours at village Haruchak under PS Kaliachak, entered into a criminal conspiracy with each other to possess 292 grams of brown sugar in dry condition and 338 grams of brown sugar in wet condition, being a commercial quantity without any valid authorization at their house in contravention of the provision of the NDPS Act?
- 3) Whether the prosecution story is worth credence and whether the prosecution has been able to establish the charge against the accused persons 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 292 grams of brown sugar in dry condition and 388 grams of brown sugar in wet condition from the bedroom of the house of both the accused persons who entered into a criminal conspiracy with each other to possess the same. It is argued that prosecution has been able to prove the charge against the accused persons and they are liable to be convicted for the offence u/s 21(c)/29 of NDPS Act. It has been argued by the Ld. Special PP for the State that conscious possession of the contraband was duly established by the prosecution beyond reasonable doubt through the testimonies of the prosecution witnesses. Furthermore, the involvement of the

accused persons in the conspiracy was duly corroborated. The rebuttable presumption of fact as enshrined under [section 54](#) read with [section 35](#) were attracted in the present case and the same could not be rebutted by the accused persons throughout the trial. Through the testimony of the prosecution witnesses examined in the present case, the prosecution has been able to discharge its burden that all the required compliances, including the compliance of [section 41](#), [42](#), [50](#), [55](#) and [57](#) of the Act was carried out in the present case. There is sufficient material to establish the search and seizure of the contrabands in due compliance of the mandatory provisions of the Act. Therefore, from the totality of the facts and circumstances of the present case, the prosecution has proved beyond reasonable doubt that both the accused persons are guilty for commission of the offences punishable [u/s 21 \(c\)/ 29 NDPS Act](#).

2) In reply Ld. Counsel for the accused persons argued that prosecution has miserably failed to prove the charge against the accused persons. Ld. counsel for the accused persons further argued that there is total non compliance of section 41,42 and 57 of the NDPS Act in this instant case. It is further argued that Ext P/5, being the GD entry by dint of which a secret credible source information was lodged did not bear the names and particulars of the accused persons situated at Haruchak village. The Ld Counsel for the accused persons further argued that from Ext P/6, being the authorization issued u/s 41 (2) of the NDPS Act it shall reveal that there was no mention of any particular house of any village. It was further argued that Ext P/6 does not reveal that PW1 and his team was authorized to conduct raid and search to work out the source information at Haruchak village at the house of the accused persons. It was further argued that no documents regarding ownership of the house of the accused persons from where the contraband were allegedly recovered were seized or neither any independent witnesses of the village were called to witness the alleged search and seizure of contraband from the bed room of the house of the accused persons. It was further argued from the Ld Counsel for the accused persons that there were major contradictions in the evidence of PW2 and PW3 regarding personal search and no labels were exhibited at the time of evidence. It was further contended that the chain of custody of the seized contraband were not proved and PW2 and PW3 did not state about the presence of the father of the accused persons at the house at that relevant time. No seizure was made at the place of occurrence and none of the witnesses of occurrence identified the seized alamat in court. It is contended that no documents regarding ownership of the house where the brown sugar were being allegedly seized by the IO. It is further argued that the property register of the police station has not been produced to prove that the alamat was kept in the police station after seizure and that no seizure was made from the accused persons. On the above scores it was submitted by the Ld Defence Counsel that the prosecution case suffers from serious infirmities for which both the accused persons are entitled to acquittal for the reason that the charges against them 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 persons 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 persons 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 persons have committed the alleged offences. Ld. Defence Counsel on behalf of accused persons has argued that the accused persons 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 PW7. 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 seven 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 persons are guilty of the offences with which they have been charged or not.

5) **PW1 SI Biplab Kr Das** being the informant, stated in his evidence that on 02.12.2023 at about 0125 hours as per secret source information he informed his superior Sri Manabendra Saha, IC Kaliachak PS and DSP Sri Prosanta Debnath and on receipt of the consent letter of the DSP, a raiding team was constituted comprising of he himself along with SI Ajay Sankar Chowdhury, SI Anandamay Saha and other force and a GD entry was made being no 57 dated 02.12.2023 and Kaliachak PS special MCC Number 6022 of 2023 dated 02.12.2023 before leaving the PS. PW1, in his evidence further stated that at about 0145 hours they left the PS and at about 0205 hours they reached Haruchak village and contacted with the source and the source identified the accused r house and after reaching the accused r house they noticed that the accused r house was locked. PW1, in his evidence further stated that they knocked the door and the accused came out. PW1, in his evidence further stated that they revealed their identity and they informed the accused that they have information that huge quantity of narcotics have been stored in the accused r house. PW1, in his evidence further stated that as per the willingness of the accused they entered inside the accused r bed room and found another person present in the bed room and on being asked he disclosed his name as Rahamat Sk. PW1, in his evidence further stated that on search of the bed room they found two black colour poly packet concealed in the bed room and one black colour poly packet contained 292 grms of brown colour power seems to brown sugar in dry condition and another packet contained 388 grams of brown colour powder seems to be brown sugar in wet condition. PW1, in his evidence further stated that with the help of digital weight machine the measurement was made at the spot and they also carried relevant documents, pen, papers, electronic weight machine, sealing materials, mobile, drug detection kit etc along with us and all the articles were packed and sealed and they were labeled and the seized articles were seized under proper seizure list in between 0305 hours and 0340 hours. PW1, in his evidence further stated that the seal articles were sealed properly with sealing wax and the seizure list was prepared by me in his own handwriting. PW1, in his evidence further stated that both the accused were arrested at the spot and the grounds of arrest was communicated to them and they returned to the PS along with the accused and the seized articles and the entire seizure procedure along

with the arrest procedure were video-graph and the same was transferred in a Pen-drive and was deposited also to the Malkhana Dealing officer for safe custody and thereafter he submitted a typed complaint before Kaliachak PS for lodging complaint. He proved Ex P/1, Ex P/2, Ex P/3, Ex P/4, Ex P/5, Ex P/6 in open Court. He identified both the accused in open Court.

6) **PW2 SI Anandamaya Saha** stated in his evidence that on 02.12.2023 at about 01.25 hours as per secret information he himself, SI Ajoy Shankar Chowdhury along with force accompanied SI Biplab Kr Das went for raid at house of Aliul Sekh at Haruchak under PS Kaliachak and as per identification by the source they reached at house of Aliul Sekh and knocked the door. PW2, in his evidence further stated that accused Aliul Sk came out from house of Aliul Sekh and one Rahakat Sk was present at the time in house of Aliul Sekh and they disclosed their identity to Aliul Sekh and also disclosed the purpose of search. PW2 in his evidence further stated that after legal all formalities they conducted search and at the course of search two black coloured polythene packets were recovered under under Aliul Sekh r bed and the two black coloured plastic packets were weighted and after examination in the narcotic kit machine it appeared to be brown sugar. PW2 in his evidence further stated that one packet weighed about 292 grams and other packet weighed 388 grams and both the two black coloured plastic packets contained brown sugar. PW2 in his evidence further stated that SI Biplab Kr Das seized the same at the spot and after packing labeled the same and Aliul Sekh and Rahamat Sk were arrested at the spot by SI Biplab Kr Das and thereafter Aliul Sekh along with the seized articles were brought to the PS. Ex P 4/1 was identified by PW2 in open Court. PW2 identified the accused in open Court.

7) **PW3 SI Ajoy Shankar Chowdhury** stated in his evidence that on 02.12.2023 at about 01.25 hours as per secret information he himself, SI Anandamaya Saha along with force accompanied SI Biplab Kr Das went for raid at house of Aliul Sekh at Haruchak under PS Kaliachak and as per identification by the source they reached at house of Aliul Sekh and knocked the door. PW2 in his evidence further stated that Aliul Sekh came out from house of Aliul Sekh and one Rahakat Sk was present at the time in house of Aliul Sekh and they disclosed their identity to Aliul Sekh and also disclosed the purpose of Aliul Sekh r search. PW3 in his evidence further stated that after legal all formalities they conducted search and at the course of search two black coloured polythene packets were recovered under under Aliul Sekh r bed and the two black coloured plastic packets were weighted and after examination in the narcotic kit machine it appeared to be brown sugar. PW2 in his evidence further stated that one packet weighed about 292 grams and other packet weighed 388 grams and both the two black coloured plastic packets contained brown sugar. PW3, in his evidence further stated that SI Biplab Kr Das seized the same at the spot and after packing labeled the same and Aliul Sekh and Rahamat Sekh were arrested at the spot by SI Biplab Kr Das and thereafter Aliul Sekh and Rahamat Sekh along with the seized articles were brought to the PS. Ex P 4/2 was identified by PW3 in open Court. PW3 identified the accused in open Court.

8) **PW4 Mithun Nag** stated in his evidence that on 02.04.2024 SI Upendra Nath Roy of their PS authorized him to go to CFSL Kolkata for collecting the CFSL report in connection with Kaliachak PS no 1539 of 2023 and he went to the office of the CFSL Kolkata and submitted the relevant documents. He further stated that he was issued a letter from the CFSL Kolkata

informing him that the report has not been prepared yet and he returned to the PS and deposited the letter before SI Upendra Nath Roy. PW4 identified P 7 in open Court.

9) **PW5 Jagajyoti Singha** stated in his evidence that on 06.12.2023 he came to the chamber of the Ld JM 3rd Court, Malda, with SI Urgan Lama for the purpose of the inventory of the seized contraband and after inventory, four packets namely AI, A2, B1 and B2 of samples were prepared and apart from them, HG Rajkumar Mandal was also present and he was examined by the IO in connection with this case. PW5 identified Ex P/8 and Ex P/9 in open Court.

10) **PW6 Urgan Lama** stated in his evidence that on 02.12.2023 he was endorsed with the investigation of Kaliachak PS case no 1531/2013 dated 02.12.2023 u/s 21 (c)/27A/29 of the NDPS Act and he received and perused the typed complaint along with the FIR, examined the witnesses and recorded their statement u/s 161 CrPC, forwarded the arrested accused persons to the Ld Court. PW6, in his evidence further stated that on 06.12.2023 he came to the chamber of the Ld JM 3rd Court, Malda for the purpose of the inventory of the seized articles, sent the sample exhibits to the CFSL, Kolkata for the purpose of examination, visited the PO and prepared the rough sketch along with index. PW6, in his evidence further stated that on account of his transfer on 28.03.2024 to another PS, he made over the case for continuation of investigation to IC Kaliachak PS. He proved Ex P/10, Ex P/1/1, Ex P/11, Ex P8/1, Ex P9/1 in open Court.

11) **PW7 SI Upendra Nath Roy** stated in his evidence that on 28.03.2024 he received the case diary of Kaliachak PS case no 1531/2013 dated 02.12.2023 u/s 21 (c)/27A/29 of the NDPS Act for continuation of investigation and after being entrusted with the investigation he collected the CFSL report and photography of the inventory. PW7 in his evidence further stated that he examined some of the witnesses and recorded their statements u/s 161 CrPC, sent a special messenger twice for collection of the CFSL report, submitted the prayer for extension the period for completion of investigation. He further stated that on 28.05.2024 he submitted the charge-sheet being no 546 of 2024 dated 28.05.2024 against you and other accused persons u/s 21(c) 27A/29 of the NDPS Act. He proved Ex P12, Ex P13 in open Court.

12) 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 persons 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 persons.

APPRECIATION OF THE ORAL AND DOCUMENTARY EVIDENCE

In the background of the above, before discussing the evidence brought on record in the present case, it is pertinent to point out that the accused persons can be convicted on the basis of credible evidence brought on record and the appreciation of the said evidence must be done in correct and true perspective manner and in the natural course of events, what would have been occurred. Appreciation of evidence beyond reasonable doubt does not mean that it should be assessed beyond any of doubt. Beyond Reasonable Doubt means that the prosecution is

required to place evidence at a higher degree of preponderance of probabilities compared to what is degree of preponderance of probability in civil cases. The theory of Beyond Reasonable Doubt means expecting higher degree of preponderance of probabilities and the natural conduct of human beings.

Besides proving the aforesaid facts, the prosecution is also required to prove that the investigating agency carried out the investigation in compliance with the provisions of [NDPS Act, 1985](#). The investigating agency must adhere strictly to the legal procedure established during the search, ensuring transparency and fairness in the investigation. By adhering to this procedure, the agency demonstrates its commitment to protecting personal liberty, a fundamental right of citizens. This ensures that the search was conducted in a manner that upholds the principles of the judicial system. The credibility of the evidence presented by the prosecution is enhanced when the investigating agency follows the statute scrupulously. The failure to adhere to the procedure raises a doubt in the mind of the Court regarding the manner in which the investigation is carried out, which obviously favors the accused.

13) As per Section 35 and 54 of the NDPS Act there are presumption against accused, that Court shall presume the existence of culpable mental state for commission of offence, and that, unless and until contrary is proved, the accused has committed offence under the Act in respect of the contraband of which he falls to account satisfactorily.

Therefore, since there is reverse burden on accused, from the arguments advanced by learned Special. Public Prosecutor for State and Ld. Defence Counsel and facts and material on record, following points for determination are framed:

1. Whether there is compliance of [sections 41](#) and [42](#) NDPS Act and to what extent it is complied and its effect on prosecution case?

2. Whether there is compliance of [section 50](#) and Section 57 of the NDPS Act and to what extent it is complied and its effect on prosecution case?

4. What is the effect of non-joining of public witnesses in the present case?

Whether there is compliance of [sections 41](#) and [42](#) NDPS Act and to what extent it is complied and its effect on prosecution case?

14) 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.

15) [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\(c\)/29](#) of the N.D.P.S. Act is to be dealt with.

16) [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.

17. 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.

18) The nature and manner of compliance 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 \(1\)](#).

19) 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.

20) 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.

21) 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](#).

22) 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."

11. [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.

12. [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) This is a case based on prior secret information received by Pw1 while he was in the office. As per [section 42](#) the recipient of information taken down in writing, or of the knowledge, is any officer of police above the rank of peon, sepoy or constable, who arrives at a reason to believe that any offence under the Act has been committed. Such officer is empowered to conduct search, seizure or arrest even without any warrant [u/S 41\(1\)](#) or authorization [u/S 41\(2\)](#) of the Act. Only compliance such officer is required to comply, if the information is taken down in writing, is to send a copy thereof to his immediate superior within seventy two hours. P.W1 has not deposed anything in his Examination-in-Chief about the sending of any report regarding search, recovery, seizure to his immediate official superior in compliance with the provisions of [Section 42](#), [50\(6\)](#) and [57](#) of the N.D.P.S. Act, 1985. The said P.W.1 deposed that he had taken down into writing the information received about the possession of brown sugar stored by the accused persons at their house at Haruchak village the GD book of his office. He filed copy of that information taken down into writing which was marked as Exhibit 5. A threadbare perusal of Exhibit P5 shows that there was no information taken down in writing that both the accused persons stored narcotics substance at their house at Haruchak village, It is simply written down in Exhibit P5 that huge number of narcotic substance was stored at village Haruchak for the purpose of smuggling. It was not written down specifically that the narcotic substance was specifically stored at the house of both the accused persons for the purpose of smuggling. So the information taken down in writing by PW1 after receipt of the source information is incomplete.

24) The above evidence of P.W.1, itself is going to show that, he received credible source information about the storage of narcotic substance at the house of the accused persons at Haruchak village but, he (P.W1) has not uttered a single word about the accused persons in the GD entry. PW1 also did not state anything about the sending up of any copy of such report to his immediate official superior before the alleged recovery and seizure of the brown sugar. He (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.

25) 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.

26) Here, in this case at hand, when the secret source information was received by PW1 while he was duty at about 01.25 hours, he claimed in his evidence that he immediately informed his superior Sri Manabendra Saha, IC, Kaliachak PS and DSP Sri Prosanta Debnath about the information. He further stated that he personally noted the information in the GD book vide GD no 55 dated 02.12.2023 which was marked as Ext P/5. But it is found from Ext P/5 that there is no note therein that both the accused persons namely Aliul Sk and Rahamat Sk have stored brown sugar at their house. There is also no note in Ext P/5 that both the accused persons have their residence at Haruchak village. There was sufficient time for PW1 to send the copy of his recorded information to his immediate official superiors 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. There is no document to show that a copy of the information which was taken down in writing by PW1 was sent to his immediate official superiors within 72 hours. It can be further seen from the cross-examination of PW1 that he admitted no reasons to believe that an offence under NDPS Act is about to be committed in the Ext P/5. It was also admitted by PW1 that the names of the both accused persons were not mentioned in Ext P/5 stating that they have stored Narcotic substances in their house.

27) It is also found from the cross-examination of PW1 that he admitted that he did not inform the superior officers after the search, seizure and arrest. Therefore there is total non compliance of section 57 of the NDPS Act as PW1 was required to make a full report of the all particulars of seizure to his immediate superior officers within 48 hours next after such arrest and seizure.

28) 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.

29) What is the effect of non-joining of public witnesses in the present case?

In this context, it can be noticed from the evidence of PW1, that when they reached the house of the accused persons, they tried to look for independent witnesses within the local area but It further reveals from the cross-examination from PW1 that Haruchak village is a big village and there are many residential house. It was argued by the Ld. Counsel for the accused persons that in spite of the fact that Haruchak village is a large one, PW1 and the other raiding team did not make any effort to join independent witnesses to the alleged search and seizure from the house of the accused persons. The Ld. Counsel for the accused persons pointed out that while the accused persons were apprehended around 0305 hours and throughout this period the police remained present at the spot and yet they could not get a single public witness to be associated.

30) This is perhaps the weakest line in the entire case of the prosecution. It seems extraordinary that although PW1 and the entire raiding party remaining at the spot i.e at Haruchak village they were unable to locate a single public witness to be associated in the proceedings.

31) Failure to associate independent witness is not fatal to the prosecution case, as long as it is shown that efforts were made and none was willing. However it has to be shown that after making efforts, the police officer was not able to get public witnesses to associate with either the raid or the arrest of the accused persons. In other words in every case it will have to be examined whether serious efforts made by the police to associate public witnesses. In the present case as already noticed the entire raiding party remained at Haruchak village which is a big village PW1 in his cross-examination has admitted Haruchak village is a village and there are many residential houses. But he could not show that he made any effort in calling at least one member of the adjoining house of the accused persons. In other words no sincere effort was made.

32) In the case in hand neither any public witness has been joined during entire search and seizure procedure nor the IO recorded the particulars of any person who was asked to join the investigation. The place of search and seizure is always a question in any trial. This requirement of joining public witness of the area where investigation is conducted has its significance to establish the spot of recovery. In absence thereof, place of recovery always gets questioned. Accused persons were from their own house situated at Haruchak village which is a large one. When asked in examination, only explanation of non joining of public witnesses furnished by PW1 is that no independent witnesses could be found due to late hours at night. This, therefore, becomes another reason to doubt the case of prosecution.

33) It is further submitted by the Ld Counsel for the accused persons that the doubt has been created on the entire case of the prosecution since Ext P/6, being the Authorization u/s 41 (2) of the NDPS Act dated 02.12.2023 authorizing PW1 to conduct any search and arrest cannot be believe. To substantiate such contentions, the Ld Counsel for the accused persons harped upon the statement of PW1, PW2 and PW3. It can be noted from the evidence of PW1 that he secret source information was received by him on 02.12.2023 at about 0125 hours and according to him after receipt of the authorization, they left the PS at about 0145 hours. It is further noted from the cross-examination of PW2 and PW3 that the residence of the Deputy SP, Prosanta Debnath, is situated behind the Correctional Home within Malda Town and his office is located at Ambazar within Malda Town. It further shows from the cross-examination of PW2 and PW3 that the distance between Malda Town and Kaliachak is about 25/30 km and it takes about 50 minutes to 1 hour to reach Kaliachak from Malda Town by road. Therefore, if the information was received by PW1 at about 0125 hours it would have taken at least another 50 minutes to 1 hour to reach the residence of Deputy SP, Prosanta Debnath which is situated at Malda Town from Kaliachak. But PW1, PW2 and PW3 have unanimously stated that they left the PS at about 0145 hours to workout the secret source information which was received by PW1 at 0125 hours after receipt of authorization u/s 41 (2) of the NDPS Act. The glaring inconsistencies in the case of the prosecution have remained unexplained and raises reasonable doubt as to the version of the prosecution.

34) The case property was never produced before this Court and was not exhibited in the testimony of any prosecution witness, in spite of the fact PW1 was examined and cross-examined prior to the destruction of the case property. All the other witnesses examined after PW1 could not identify the case property since the same was not produced. Therefore, the most crucial link of the case of the prosecution has gone missing.

Furthermore, no Malkhana Register enlist was brought on record through the testimony of PW6 and PW7. Both PW6 and PW7 were completely silent on any entry in the Malkhana Register regarding the case property. In fact PW6 did not seize any GD book, property register, log book of any vehicle in connection with this case and neither examined the Malkhana Officer. He did not seize any documents of the ownership of the alleged house from where the recovery of contraband was made and neither examined the residents of the adjacent houses. No independent witnesses were examined who had seen the accused persons residing at the alleged house. Even PW6 did not examine the members of the raiding party as he did not collect their names. No documents of compliance u/s 52 of the NDPS Act and 57 of the NDPS Act were seized by him. As already seen, there is total non compliance of Section 42 (2) and section 57 in this instant case. Further the case of the prosecution is full of inconsistencies as already discussed and fall short to meet the standard of 'beyond reasonable doubt'. There appears stark contradiction in between the testimonies of the PWs which have created a dent in the case of the prosecution.

35) As per the discussions and observations made above, when there is no material in the record on behalf of the prosecution to show about the compliances of the provisions of [Sections 42, 55 and 57](#) of the N.D.P.S. Act, 1985 when prosecution has not become able to establish the ownership of the accused persons over the alleged house in question, (from which, the so-called brown sugar were allegedly seized) and when no document regarding ownership of the accused persons over the said house in question has been filed or proved on behalf of the prosecution and when the safe custody of the so-called seized brown sugar has not been proved on behalf of the prosecution in order to show the fairness of the investigation and trial, then at this juncture, it is held that, the charges brought against the accused persons have not proved by the prosecution beyond reasonable pales of doubt.

36) What is untrammelled by the oral and documentary evidence of the case, more particularly through the cross examination of the PWs, this Court does finds that the defence has been able to create any suspicion as regards to their testimonies. The defence has been able to demolish what they have stated in their chief. This Court finds that the FIR has not been corroborated by the PWs to the gamut, and clearly fails to establish the accused persons being the offenders. All the above circumstances clearly points to the innocence of the accused persons.

37) The evidence of the PWs read together in the estimate of this Court, does admit of any reasonable doubt with regard to the complicity of the accused persons in the crime. The inconsistencies pointed out on behalf of the accused persons appeal to this Court to reject the prosecution case on the basis thereon. The major omissions and additions on their part in the course of their deposition at the trial while narrating the incident on the other hand introduce them to be untrustworthy witnesses.

38) Considering all the aspects and after appreciation of all the materials produced before this Court in the form of oral evidence and documentary evidence, this Court has no other alternative but to hold that the evidence of PWs suffer from material lacunae insofar as against the accused persons. Under such circumstances, the benefit arising out of that lack of evidence

should go in favour of the accused persons. This Court has no other alternative but to hold that there is no iota of ingredients to constitute the offence **21(c)/29 of NDPS Act 1985**. In this Court's opinion, there is no evidence and materials available on record where from an inference of the accused persons having committed the offence may necessarily be drawn. The totality of the circumstances discussed herein above does not raise any presumption of guilt against the accused persons.

39) Thus, the above points under determination are therefore answered in the negative.

40) In view of the discussion made herein and considering the above findings as a whole, this Court has no alternative but to hold that the prosecution has miserably failed to prove his case beyond all reasonable doubt and as such the accused persons deserve to be acquitted from this case.

41) Hence, it is, accordingly,

ORDERED

That the accused persons, namely, **Aliul Sekh** and **Rahamat Sekh** are hereby found not guilty for the offences punishable u/s **21(c)/29 of NDPS Act 1985** and they are accordingly **acquitted** under section 235(1) of the Criminal Procedure Code.

Seized contraband if any, if not previously disposed of, be disposed of according to law after the period of appeal is over. Seized articles if any, be disposed of according to law after the period of appeal is over.

The accused persons be released at once from custody and set at liberty forthwith if not wanted in any other cases.

Let a soft copy of the judgment be uploaded in the CIS within 48 hours from this day as per Rule 186A of the Criminal Rules and Orders of the Hon'ble High Court at Calcutta.

Let a copy of this Judgment be forwarded to the Secretary, DLSA, Malda 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.**