

GAHC010142562019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.A./360/2019

SHRI RAM MILAN AND ANR
S/O- LATE SHIV KUMAR, R/O- UNCHAHAR, P.O. BAJAORA, P.S.
UNCHAHAR, DIST.- RAEBARELI, UTTAR PRADESH- 229404.

2: MD. ABDUL KALAM
S/O- MD. SAIFULLAH
R/O- MINUTHONG GOLAPATTI
P.O. BAJAORA
P.S. PROMPAT
DIST.- IMPHAL EAST
MANIPUR- 795005

VERSUS

THE UNION OF INDIA AND ANR
REP. BY NCB

2: ANJANI KUMAR
INTELLIGENCE OFFICER
NARCOTICS CONTROL BUREAU
GUWAHATI ZONAL UNIT
VIP ROAD
RUPKUNWAR PATH CHACHAL
GUWAHATI- 781022

Advocate for the Petitioner : MS. S K NARGIS

Advocate for the Respondent : SC, NCB

Linked Case : **Crl.A./393/2019**

MD. SOHRAB KHAN
S/O- LATE JALIL KHAN
R/O- SALEMPUR

P.O. BAJAORA
P.S. DOBHI
DIST.- GAYA
BIHAR- 824201.

VERSUS

THE UNION OF INDIA AND ANR
REP. BY NCB.

2:ANJANI KUMAR
INTELLIGENCE OFFICER
NARCOTICS CONTROL BUREAU
GUWAHATI ZONAL UNIT
VIP ROAD
RUPKUNWAR PATH
CHACHAL
GUWAHATI- 781022.

Advocate for : MR A K AZAD

Advocate for : SC

NCB appearing for THE UNION OF INDIA AND ANR

Linked Case : **Crl.A./288/2019**

MD. MUJIBUR RAHMAN
S/O- MD. SAIFULLAH OF HATTA
P.O. AND P.S. POROMPAT
IMPHAL EAST DISTRICT
MANIPUR
PIN- 795005.

VERSUS

NARCOTICS CONTROL BUREAU
INDIA

Advocate for : MR H R A CHOUDHURY

Advocate for : SC

NCB appearing for NARCOTICS CONTROL BUREAU

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 12-10-2023

(M. Zothankhuma, J)

Heard Mr. HRA Choudhury, learned senior counsel assisted by Ms. SK Nargis, learned counsel for the appellants. Also heard Mr. SC Keyal, learned Special Public Prosecutor, NIA.

2. These 3(three) appeals has been filed on behalf of 4(four) appellants namely, Ram Milan, Md. Abdul Kalam, Md. Mujibur Rahman and Sohrab Khan, against the impugned Judgment and Order dated 22.04.2019 passed by the learned District & Sessions Judge, Kamrup(M), Guwahati, in NDPS Case No.38/2016, by which the appellants have been convicted under Sections 17(c) and 21(c) of the NDPS Act, in connection with the recovery of 54.648 kg of Opium and 2.060 kg of Morphine. The appellants have been sentenced to undergo rigorous imprisonment (R.I.) for 20 (twenty) years and to pay a fine of Rs.2(two) lakhs each, in default to undergo rigorous imprisonment for another 1(one) year under Section 17(c) of NDPS Act and to undergo rigorous imprisonment for 20(twenty) years and to pay a fine of Rs.2(two) lakhs each and in default to undergo rigorous imprisonment for 1(one) year under Section 21(c) of NDPS Act.

3. The prosecution case in brief is that on the basis of information received by the NCB that Md. Abdul Kalam and Md. Mujibur Rahman would be delivering consignment of Morphine and Opium to 2(two) persons, namely, Md. Sohrab Khan and Ram Milan near Indira Gandhi Stadium, Sarusajai, Guwahati on 07.05.2016, a team comprising of intelligence officers was constituted to intercept the said transaction. On reaching the spot, the enforcement team saw

a Scorpio vehicle bearing registration No.WB-58 C-2157 parked on the roadside and at around 06.30 A.M, a truck bearing registration No.MN-04-A1960 arrived near the Scorpio vehicle. Thereafter, 2(two) persons, came out from the Scorpio and went to meet the two persons who had come out from the truck. After the four persons had some discussion, one person entered into the cabin of the truck and took out a few polythene packets and handed it over to the other persons. The enforcement team thereafter rushed towards the 4(four) persons and detained them, along with the polythene packets, which were in their hands. The search and recovery of the packets revealed the presence of 54.648 kg of Opium and 2.060 kg of Morphine.

4. The learned counsel for the appellants submits that Md. Sohrab Khan and Ram Milan were the occupants of the scorpio, while Md. Abdul Kalam and Md. Mujibur Rahman were the occupants of the truck.

5. The learned counsel for the appellant submits that the challenge made to the impugned Judgment and order passed by the learned Trial Court is basically on four grounds:-

5.1. Charges were framed against the appellants under Section 8(c)/21(c) and 29 of the NDPS Act. However, the conviction of the appellants has been made under Sections 17(c) and 21(c) of NDPS Act, though charge under Section 17(c) had been framed.

5.2. The second challenge to the impugned judgment is on the ground that the NCB did not comply with the provisions of Section 52A(2) of the NDPS Act, and as such, the mandatory provision of law having not been followed, the same vitiated the prosecution case and consequently the trial was vitiated. In this regard, he has relied upon the following judgments of the Hon'ble Supreme

Court and this Court:

1. ***Mangilal Vs. The State of Madhya Pradesh, Criminal Appeal No.1651/2023*** (paragraph Nos. 5, 6 & 9);
2. ***Union of India Vs. Mohanlal & Anr., (2016) 3 SCC 379*** (paragraph No.31);
3. The Division Bench judgment of this Court in ***Crl.A.No.101/2022 (Moinul Hoque Vs. The State of Assam)***; and

5.3. The third ground of challenge made by the appellants to the impugned judgment, is on the ground that though search had been conducted on the body of the appellants and on their bags/packets, however, Section 50 of NDPS Act had not been complied with. He further submits that the non compliance of Section 50 of NDPS rendered the search, recovery and seizure of the contraband drugs as illegal and vitiated the prosecution case. In support of his submission, he relies upon the following judgments passed by the Hon'ble Supreme Court:-

1. ***The State of Rajasthan Vs. Parmanand & Anr***, reported in ***(2014) 5 SCC 345***);
2. ***Sanjeev & Others Vs. The state of Himachal Pradesh, reported in (2022) 6 SCC 294*** (Paragraph No.9);
3. ***Narcotics Control Bureau Vs. Sukh Dev Raj Sodhi***, reported in ***(2011) 6 SCC 392***.

5.4 The fourth ground of challenge taken by the learned counsel for the appellant to the impugned judgment is that, the two independent seizure

witnesses were not examined by the learned Trial Court, in view of the fact that the summons that had been issued to them, had been unserved, with the note stating that they were not available in their respective addresses. The learned Senior counsel submits that, it was the duty of the prosecution to produce the two independent witnesses and their non-examination would have required the learned Trial Court to acquit the appellant, as it could not be proved that the seized contraband goods had been recovered from the appellants.

6. Besides the above submissions, the learned counsel for the appellant also states that the learned Trial Court had inadvertently exhibited 2(two) documents as Ext-33, one being the FSL report and the other being the inventory made under Section 52 A of the NDPS Act. He also submits that the learned Trial Court had a duty to give reasons for awarding the maximum sentence to the appellants under Section 17(c) and 21(c) of NDPS Act. However, no reasons have been given by the learned Trial Court for the same.

7. Mr. SC Keyal, learned Special Public Prosecutor, NIA, at this stage submits that the exhibits mentioned by the learned Trial Court in the appendix are not in consonance with the exhibits that have been put in the Paper Book. He gave the example of Exts. 33 and 43, which are mentioned in page Nos. 143 and 144 of the Paper Book, while comparing the same with the actual exhibits in Page Nos. 193 and 204. He accordingly submits that unless a proper verification of the exhibits are made, there could be a travesty of justice.

8. We have also been apprised of the order dated 05.11.2020 passed in I.A. (Crl.) 351/2020, wherein it has been stated that Ms. SK Nargis, the learned counsel had prepared the Paper Book in the connected appeal. The order further states that the Criminal Paper Book Section, as well as the learned counsel for the NCB, are given time to verify regarding receipt of the Paper Book

so prepared.

9. A reading of the above order dated 05.11.2022 passed in I.A.(Crl.) 351/2020 implies that the Paper Book prepared by the appellants' counsel should have been verified by the Criminal Paper Book Section of the Registry of this Court and by the counsel for the NCB. However, the same has not been done as is clear from the footnote at the end of the index of the Paper Book which shows that the Paper Book has been prepared, translated and examined by the learned counsel for the appellants, Ms. SK Nargis. The same has been typed by Aniten Mesen. However, with regard to the heading "compared by" no name or institution has been mentioned. This makes it clear that the concerned Section of the Registry of this Court has not verified the correctness of the Paper Book prepared by the learned counsel for the appellants.

10. In view of the above, we are of the view that unless the Paper Book prepared by the appellants is verified by the concerned Section of the Registry of this Court with regard to its veracity, it would not be proper for us to decide the present appeal on the basis of the unverified Paper Book. Accordingly, the concerned Section of the Registry of this Court shall verify the correctness of the Paper Book and especially with regard to the exhibits mentioned in the Paper Book, by comparing them with the Lower Court Records.

11. The case be listed for ***orders*** after proper verification by the concerned Section, ***after the Puja Vacation***.

JUDGE

JUDGE

Comparing Assistant