

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION



CRIMINAL APPEAL NO. 1945 OF 2022
(@ SLP (CRL.) NO. 8068/2021)

AMIRUL RAHAMAN

PETITIONER(S)

VERSUS

UNION OF INDIA

RESPONDENT(S)

O R D E R

Leave granted.

This appeal, preferred by the appellant-Amirul Rahaman, takes exception to the judgment dated 09.08.2019 passed in C.R.A. No. 384/2017, whereby the High Court of Calcutta has upheld the conviction of the appellant under Section 20(b)(ii)(c) read with Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985¹. The High Court upholds the order of sentence wherein the appellant has been sentenced to undergo rigorous imprisonment for ten years, pay fine of Rs.1,00,000/- and in default, to undergo rigorous imprisonment of six months.

One of the issues raised before us relates to the interpretation of Section 296 of the Code of Criminal Procedure, 1973 and the interpretation of the judgment of this Court in *Thana Singh v. Central Bureau of Narcotics*². While we have some

¹ For short 'NDPS Act'.

² (2013) 2 SCC 590.

reservations on the findings recorded by the High Court in interpreting the judgment in *Thana Singh* (supra), we are not inclined to conclusively adjudicate on the said aspect, as we find that the appellant is entitled to acquittal for several reasons, which we would record in brief.

As per the prosecution, 30.440 kgs of Hashish, was statedly recovered on 28.01.2012, from the possession of the appellant and four co-accused persons/convicts, namely, Md. Islam @ Shahrukh @ Raj, Md. Sarfaraz @ Bonu, Kamaluddin @ Shanu and Nasim Akhter @ Raju, who were apprehended from Coach No. S-7 of Kanchankanya Express at New Jalpaiguri Railway Station, Siliguri, West Bengal at about 8.00 p.m.

As per the case of the prosecution, the appellant along with co-accused/co-convicts were arrested/detained and the narcotics substance/contraband was seized in the presence of two independent witnesses, Sunil Kumar Singh and Rishi Kumar Prasad, P.W. 9 and P.W. 10 respectively. The depositions of the independent witnesses cuts at the root of the prosecution's case. Sunil Kumar Singh (P.W. 9) has deposed that he was called by the Directorate of Revenue Intelligence³ Officers to their office at Siliguri on 29.01.2012. He had, accordingly, proceeded to the DRI office, where DRI officers and 4/5 other persons were present. He was told by the DRI Officers that some material in the bags, which were 2 or 3 in number, had been seized. He had heard that there was capsules-like material in the bags. Sunil Kumar Singh (P.W. 9) could not

³ For Short 'DRI'.

recollect what happened thereafter. He was asked to sign some papers. The Panchnama marked as Ext. 25, dated 29.09.2012, is a computer typed document and not a hand written document. The Panchnama records details of the narcotics substance/contraband seized by the DRI officers. Sunil Kumar Singh (P.W. 9) had testified that he had put his signatures to the statements made by Nasim Akhter and Kamaluddin under Section 67 of the NDPS Act. Sunil Kumar Singh (P.W. 9), in his cross-examination, admitted that he had not gone to the New Jalpaiguri Railway Station with the DRI officers. Sunil Kumar Singh (P.W. 9) could not say from where the 4/5 persons, who were present in the DRI office, had come. Sunil Kumar Singh (P.W. 9) admitted as correct that he had no personal knowledge of the facts of the case in which he had come to depose.

Rishi Kumar Prasad (P.W. 10) had similarly stated that on 29.01.2012, which is the date of the incident, he had been asked by Mahesh Thakur (P.W. 6), a driver working in the DRI office, to come to their office. Thereupon, Rishi Kumar Prasad (P.W. 10) had reached the DRI office at about 8:00 a.m.-9:00 a.m. He had seen some packets kept on the table, which he had heard was 'Hashish'. Rishi Kumar Prasad (P.W. 10) was shown those packets and was told that these packets had been recovered by the DRI officers. Rishi Kumar Prasad (P.W. 10) was asked to sign some papers which were prepared there, and some had already been prepared. Rishi Kumar Prasad (P.W. 10) could not identify the five apprehended accused persons by face, and he could not say how many packets were there. Rishi Kumar Prasad (P.W. 10) returned after putting his signatures.

Rishi Kumar Prasad (P.W. 10) was shown the inventory of the goods cum seizure, which were marked as Ext. 24. He accepted his signatures at the bottom of each page. Rishi Kumar Prasad (P.W. 10) had also deposed about the Panchnama (Ext. 25) and other exhibited documents, and he accepted that these documents had been signed by him. In the cross-examination Rishi Kumar Prasad (P.W. 10) accepted as correct that he was not aware of the details of the documents signed by him, and they were not read over to him. Rishi Kumar Prasad (P.W. 10), had been told that the packets contained 'Hashish' but its contents were not shown to him. Rishi Kumar Prasad (P.W. 10) accepted as correct that on 28.01.2012 he had not accompanied the DRI officers to the New Jalpaiguri Railway Station. Rishi Kumar Prasad (P.W. 10) also deposed that he had no knowledge from where or from whose possession the said articles had been recovered.

It is noticeable that both Sunil Kumar Singh (P.W.9) and Rishi Kumar Prasad (P.W. 10) had not been declared hostile, *albeit* had met the DRI officers on 29.01.2012. They were not with the DRI officers, when the team had allegedly detained the appellant and four others at the New Jalpaiguri Railway Station on 28.01.2012. It may be also relevant to note that the prosecution had relied upon the Railway e-ticket, which was marked 'X' for identification. The said ticket was booked by an agent in Kolkata, as per the details recorded therein, on 28.01.2012 at about 10.51 a.m. It is stated and claimed by the prosecution that the ticket was recovered, when the present appellant, along with other co-accused/co-convicts,

were arrested after they had boarded the train at New Jalpaiguri Railway Station on 28.01.2012 to go to Kolkata. It is not understood and explained so as to how the e-ticket, which was purchased in Kolkata, was found in possession of the appellant and other co-convicts at about 8.00 p.m. on 28.01.2012. The distance between New Jalpaiguri and Kolkata is more than 550 kms, as per the e-ticket.

In view of the aforesaid evidence, we do not think that we should rely upon the testimonies of Debasish Acharjee (P.W.1), Dipankar Chatterjee (P.W.2) and other witnesses forming part of the raid team that the appellant and other co-accused/co-convicts were detained and found with a narcotics while they were in compartment no. S-7 of Kanchankanya Express on 28.01.2012 at about 8.00 p.m. The said officers and the prosecution version that at that time, the independent witnesses, namely, Sunil Kumar Singh (P.W. 9) and Rishi Kumar Prasad (P.W.10) were present with the officers, is clearly contestable and discredited. There are other discrepancies emerging from the testimonies of the officers of the DRI team, which we need not examine in great depth and detail.

Considering the aforesaid position, we feel that the appellant Amirul Rahaman is entitled to acquittal on giving him benefit of doubt. Accordingly, the impugned judgment convicting the appellant is set aside. The appellant would be released, if not required to be detained in any other matter.

We are informed that the other co-accused/co-convict have not preferred any appeal before this Court. As the prosecution case and

evidence relied upon against them is identical, they would also be entitled to the benefit of the order of acquittal in the case of Amirul Rahaman. We, accordingly, direct that if they are in custody in the present case, they would be released, unless they are required to be detained in any other case.

The appeal is allowed.

Pending application(s), if any, shall stand disposed of.

..... J.
(SANJIV KHANNA)

..... J.
(J.K. MAHESHWARI)

NEW DELHI;
NOVEMBER 10, 2022.

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (CrI.) No(s). 8068/2021

(Arising out of impugned final judgment and order dated 09-08-2019
in CRA No. 384/2017 passed by the High Court At Calcutta)

AMIRUL RAHAMAN

PETITIONER(S)

VERSUS

UNION OF INDIA

RESPONDENT(S)

Date : 10-11-2022 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE J.K. MAHESHWARI

For Petitioner(s) Mr. Manjeet Singh, Adv.
Mr. Anjan Datta, Adv.
Mr. Gaganjyot Singh, Adv.
Mr. Pawan Kumar, Adv.
Mr. V.A. Mishra, Adv.
Ms. Garima G. Mukherjee, Adv.
Mr. Rajasmit Mondal, Adv.
Mr. Mukesh Kumar Singh, Adv.(AOR)
Mr. Ganga Sagar Singh, Adv.
Mr. Chandrakant Sukumar Sarkar, Adv.
Mr. Ajit Kumar Pathak, Adv.
M/S. Mukesh Kumar Singh And Co., AOR

For Respondent(s) Mr. Suryaprakash V. Raju, Ld. ASG
Mr. Guntur Pramod Kumar, Adv.
Mr. Raghavendra S. Srivatsa, Adv.
Ms. Sairica Raju, Adv.
Mr. Mukesh Kumar Maroria, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order. The operative portion of the order reads as under:

Considering the aforesaid position, we feel that the appellant Amirul Rahaman is entitled to acquittal on giving him benefit of doubt. Accordingly, the impugned judgment convicting the appellant is set aside. The appellant would be released, if not required to be detained in any other matter.

We are informed that the other co-accused/co-convict have not preferred any appeal before this Court. As the prosecution case and evidence relied upon against them is identical, they would also be entitled to the benefit of the order of acquittal in the case of Amirul Rahaman. We, accordingly, direct that if they are in custody in the present case, they would be released, unless they are required to be detained in any other case.

Pending application(s), if any, shall stand disposed of.

(POOJA SHARMA)
COURT MASTER (SH)

(R.S. NARAYANAN)
COURT MASTER (NSH)

(Signed order is placed on the file.)

ITEM NO.19

COURT NO.8

SECTION II-B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

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Date : 10-11-2022 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJIV KHANNA
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For Petitioner(s) Mr. Manjeet Singh, Adv.
Mr. Anjan Datta, Adv.
Mr. Gaganjyot Singh, Adv.
Mr. Pawan Kumar, Adv.
Mr. V.A. Mishra, Adv.
Ms. Garima G. Mukherjee, Adv.
Mr. Rajasmit Mondal, Adv.
Mr. Mukesh Kumar Singh, Adv.(AOR)
Mr. Ganga Sagar Singh, Adv.
Mr. Chandrakant Sukumar Sarkar, Adv.
Mr. Ajit Kumar Pathak, Adv.
M/S. Mukesh Kumar Singh And Co., AOR

For Respondent(s) Mr. Suryaprakash V. Raju, Ld. ASG
Mr. Guntur Pramod Kumar, Adv.
Mr. Raghavendra S. Srivatsa, Adv.
Ms. Sairica Raju, Adv.
Mr. Mukesh Kumar Maroria, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order and Amirul Rahaman has been acquitted. The order of acquittal will equally enure to the benefit of Md. Islam @ Shahrukh @ Raj, Md. Sarfaraz @ Bonu, Kamaluddin @ Shanu and Nasim Akhter @ Raju. Directions have been issued for release of the appellant, viz., Amirul Rahaman and other co-accused/co-convicts, namely, Md. Islam @ Shahrukh @ Raj, Md. Sarfaraz @ Bonu, Kamaluddin @ Shanu and Nasim Akhter @ Raju in Case No.04/CL/NDPS/DRI/SLG/2011-12 dated 29.01.2012. Accordingly, they shall be released, if not required to be detained in any other case.

Detailed order to follow.

**(POOJA SHARMA)
COURT MASTER (SH)**

**(R.S. NARAYANAN)
COURT MASTER (NSH)**