

							purpose of section 428 of IPC
A-1	Md. Mridul Ali	27/06/2021	Accused Md. Nazrul Ali @ Haque was allowed to go on bail on 12-08-2021 and accused Md. Mridul Ali was	U/S 21(a) of NDPS Act	Acquitted	N/A	N/A
A-2	Md. Nazrul Ali @ Haque						

			allow ed to go on bail on 23- 08- 2021.				
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APPENDIX-13

Date of offence	26/06/2021
Date of FIR	27/06/2021
Date of charge-sheet	20/08/2021
Date of framing of charges	03/03/2022
Date of commencement of evidence	02/05/2022
Date on which judgment is reserved	N/A
Date of judgment	28/09/2022
Date of the Sentencing Order, if any	N/A

(J U D G M E N T)

1. The prosecution case in brief as reveals from the FIR is that ASI Akshed Ali, informant of this case lodged the FIR alleging that while conducting checking on 26-06-2021 at about 6:15 P.M., at Ghoriabaha, Mukalmua Police Station, police caught the accused with Narcotropic substance and due to which he lodged the FIR.

2. The Officer-in-charge, Mukalmua Police station, on receipt of the Ejahar registered Mukalmua P.S. Case No. 311/21, under section 22(a) NDPS Act and endorsed the concerned I/O for investigation. The accused persons were arrested in connection with this case on 27-06-2021. After completion of the investigation, the concerned I/O submitted charge sheet against the accused persons, Md. Mridul Ali and Md. Nazrul Ali @ Haque under Section 21(a) of NDPS Act.
3. In due course, the accused persons appeared before the Court and the copies of relevant documents were furnished to them as per section 207 of CrPC. Having found a prima facie case against the accused persons, the charge is framed, under Section 21(a) of NDPS Act against the accused persons, which is read over and explained to them vide order dated 03-03-2022, to which they pleaded not guilty and claimed to be tried.
4. The prosecution side examined six (06) witnesses. The statements of the accused persons under section 313 of Cr.P.C. are recorded wherein they took the plea of innocence and false implication. Defence side examined no witnesses.
5. I have heard the arguments advanced by the Learned Counsels for both sides.

6. POINTS FOR DETERMINATION:-

- (i) *Whether the accused persons, Md. Mridul Ali and Md. Nazrul Ali @ Haque on 26-06-2021 at about 6:15 P.M., at Ghoriabaha, under the jurisdiction of*

Mukalmua P.S. aim at selling suspected drugs at Barnibari to Ghariabaha road and thereby committed the offence under section 21(a) of NDPS Act?

DISCUSSION, DECISION AND REASONS THEREOF:

- 7.** In the instant case, the allegation against the accused persons are that on 02-07-2019 at about 1:00 P.M., at the place of alleged occurrence, twelve numbers of Codeine Phosphate and Chlorpheninamine Maleate Syrup were found with the accused persons, who brought those for illegal sell.
- 8.** PW-3 , Forensic expert says that she examined the 70 mg light brown colored powder , she received and it gave positive test of Heroin.
- 9.** Pw-6 (IO) says in her cross-examination that she reached at the place of occurrence at 6:10 P.M., after getting the information from Md. Aksed Ali. She denied defence suggestion that Md. Aksed Ali conducted the search operation. She denied defence suggestion that Md. Aksed Ali handed her the substance which she seized. No mention of the specific place at Goruabaha on which the incident occurred as per the sketch map. On the seizure list i.e., **Exhibit P-4**, no seizure witness is resident of Goruabaha village. **Exhibit P-5** is the seizure list of the weighting machine and she has not taken signature of any witness on Exhibit P-5. She has not recorded the statement of seizure

witness/owner Sri Sonmani Nath of MR-96/21. She denied defence suggestion that Md. Rustom Ali was at Guwahati at the time of alleged occurrence. She denied defence suggestion that no authority letter was issued to conduct search operation. No authorization letter is found in the CD. Apart from O/C Mukalmua, no superior police officer was present at the time of the incident and at pre-step investigation. She denied defence suggestion that nowhere in the case diary it is mentioned that O/C Mukalmua was not present. She prepared the inventory report on 27-06-2021. She sent the contravene items to FSL on 28-06-2021. She kept the articles at Malkhana during this period at night. She has not given any written communication to her senior officer as per the mandatory provision of NDPS Act. She sent the seized narcotics to FSL after receipt of authorization from senior officer. She has not made any GD entry on the secret information on the basis of which ASI Aksed Ali was sent to the place of occurrence. No notice was given to the accused at the time of conducting search. She has not offered the accused conduct self-search on her before she conduct search on them. No authorization letter regarding conducting the FSL is in the case record. She denied defence suggestion that she has not investigated the case as per mandatory provision stipulated in NDPS Act and submitted charge sheet against the accused.

10. The process for preparation of inventory is laid down in section 52(A) of NDPS Act. The prosecution side has to prove that they have followed the process as per law laid down in section 52(A) of NDPS Act to corner the accused persons.

11. Section 52(A) of NDPS Act says:

(1). The Central Government may, having regard to the hazardous nature of any narcotic drugs or psychotropic substances, their vulnerability to theft, substitution, constraints of proper storage space or any other relevant considerations, by notification published in the Official Gazette, specify such narcotic drugs or psychotropic substances which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may from time to time, determine after following the procedure hereinafter specified.

(2). Where any narcotic drug or psychotropic substance has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the officer referred to in sub-section (1) shall prepare an inventory of such narcotic drugs or psychotropic substances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying

particulars of the narcotic drugs or psychotropic substances or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section(1) may consider relevant to the identity of the narcotic drugs or psychotropic substances in any proceedings under this Act and make an application, to any Magistrate for the purpose of

(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of such Magistrate, photographs of such drugs or substances and certifying such photographs as true; or

(c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.

(3). Where an application is made under sub-section(2), the Magistrate shall, as soon as may be, allow the application.

(4). Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying an offence under this Act, shall treat the inventory, the photographs of narcotic drugs or psychotropic substances and any list of samples

drawn under sub-section(2) and certified by the Magistrate, as primary evidence in respect of such offence.

12. Here in the present case, during the cross-examination of the I/O (PW-6), defence side clearly shows that the I/O has not followed the process laid down u/s 52(A). Hence, the certificate by the Magistrate which is with the record cannot be used as primary evidence.

13. Now, coming to the evidence of the informant, ASI Aksed Ali (PW-1) it is seen that in his cross-examination he says that at the time of conducting search, he was holding the post of ASI. No authorization letter was with him at that time for conducting search operation in respect of NDPS case. When the alleged substances were recovered, at that time i/c Smti Rajashree Buragohain was not present and she reached thereafter. He conducted the search operation without any authority from his higher authority. No reason was mentioned in the FIR why the search operation was conducted without any authority letter. No gazetted officer was present at the time when the search operation was conducted. There were local people present at the time when the search operation was conducted. There is no mention in the FIR that of what quantity of the seized material was recovered from each of the accused persons. He cannot say on the day of his deposition also of what quantity of the seized material was recovered from each of the accused persons. I/c Smti

Rajashree Buragohain reached at the alleged place of occurrence after 15/20 minutes. I/c Smti Rajashree Buragohain has recovered the alleged substances from the accused persons. He denied defence suggestion that he handed over the seized materials to the i/c Smti Rajashree Buragohain after recovering the same from the accused persons. No signature of his was taken by i/c Smti Rajashree Buragohain. The distance between the Sonapur village and Goruabaha village is about 4/ 5 km. He cannot remember when the I/O recorded his statement u/s 161 of Cr.P.C. He denied defence suggestion that in his statement recorded u/s 161 of Cr.P.C., he had not told the I/O that the seized materials were recovered from the accused persons. He cannot say whether the I/O had taken the signatures of the seizure witnesses at the alleged place of occurrence or not. He denied defence suggestion that the accused persons are innocent, they were called to the police outpost and they were arrested without any substance found with them. HE denied defence suggestion that without any authority, whimsically he conducted search on the person of the accused and arrested them in connection with this case. He denied defence suggestion that he deposed falsely that he stopped the accused persons at Ghoruabaha when they were coming by riding bike.

- 14.** From his evidence, there is no hesitation to hold that process of search and seizure has been completed without any authority letter and not as per NDPS Act.
- 15.** PW-1 (informant) also contradicted the testimony of IO (PW-6) that she has made the search and seizure as he clearly says that he conducted the search and recovered the substances and thereafter the IO reached at the place of occurrence.
- 16.** PW-2 says he knows nothing of the incident and his evidence could not extend to the prosecution case which is already suffering from non-compliance of procedure laid down in NDPS act.
- 17.** PW-4 and PW-5 are seizure witnesses of this case. In his evidence, PW-4 says that he does not know the informant. He saw the accused persons in market and other places. The incident occurred about a few months back in the evening at Gharuabaha. He and Mijafar Ali were going to Gharuabaha. He saw a police vehicle on the side of the road. They slowed down their bike seeing the police vehicle. They stopped their bike and ASI Rajashree Buragohain told them that accused persons were caught with some bad substances. They put their signature on seizure list as seizure witnesses. **Exhibit P-4 / PW-4** is the seizure list and **Exhibit P-4(1)** is his signature. He saw the plastic bottle produced before him on the day of his deposition. **MO-1** is the plastic bottle

contain with Narcotic Substances. Police recorded his statement.

18. However, he says in his cross-examination that he has not seen with his own eyes from whom MO-1 was recovered. Police took his signature at the police station, not at the place of occurrence. He has neither read the content of the seizure list nor he has knowledge of the content of the seizure list.

19. PW-5 also says that the incident occurred about 3 / 4 months back at about 6.30 / 7.00 PM at Gharuabaha. They, Tarik Ahmed and he were going to Gharuabaha by bike. One police vehicle was there on the road. They stopped the bike near the police vehicle. Police asked them whether they know the accused persons or not. They told i/c Doulashal Madam that they have seen the accused persons earlier. He put the signature on the seizure list i.e. **Exhibit P-4. Exhibit P-4(2)** is his signature. He put the signature in the police station. I/C Doulashal showed them the bottles produced before him at Doulashal Out Post. **MO-1** are those bottles. Police recorded his statement. However, during cross-examination he says that he does not know from whom Mo-1 has been recovered and he does not know the content of the seizure list. He saw the seized material at the police station. I/C Doulashal, that was the IO took him and Tarik Ahmed(Pw-4) together to the Doulashal outpost and their they put their signatures there. So, both the seizure witnesses have clearly said that the IO

took them to the police station and they put their signatures on seizure list there and they have seen the substance in question at the police station. They have no knowledge from whom the substances are recovered.

20. The evidence on record clearly shows that this a glaring example of failure of the IO to conduct the investigation as per NDPS acts. The evidences are contradicting each other and failed to corner the accused.

21. Thus, from the entire evidence on record, it can be seen that the prosecution side failed to adduce cogent, trustworthy and credential evidence against the accused persons namely Md. Hasen Ali and Md. Makshed Ali @ Mannaf Ali.

CONCLUSION

The prosecution side failed to prove its case that accused persons have committed an offence u/s 21(a) of NDPS Act.

ORDER

In the light of aforesaid discussions and reasons, it is seen that the prosecution side failed to prove the guilt of the accused persons beyond reasonable doubt.

Accordingly, the accused persons, Md. Mridul Ali and Md. Nazrul Ali @ Haque are acquitted from the offence under section 21(a) of NDPS Act and they are set at liberty forthwith. The bail bonds of the accused persons and their sureties shall remain in force for a period of 6 months from today as per amended CrPC.

Given under my hand and seal of this court on this 28th day of September, 2022.

Sri Jayanta Kumar Saikia
Addl. Chief Judicial Magistrate
Nalbari

APPENDIX-14**LIST OF PROSECUTION/ DEFENCE/ COURT WITNESSES****A. Prosecution witness**

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW-1	ASI Aksed Ali	Informant
PW-2	Md. Rustam Ali	Other witness
PW-3	Smti Shravanee Rajkhowa	Expert witness
PW-4	Md. Tarik Ahmed	Other witness
PW-5	Md. Mirjafar Ali	Other witness
PW-6	SI Rajashree Buragohain	Police witness

B. Defence witnesses, if any: NOT APPLICABLE

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE
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		WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
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C. Court witnesses, if any: NOT APPLICABLE

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:

Sr. No.	Exhibit Number	Description
1.	Exhibit P-1/PW-1	FIR
2.	Exhibit P-2/PW-3	Report no. DFS.941/2021/1906/DN- 1188/2021
3.	Exhibit P-3/PW-3	Memo no. DFS.941/2021/57
4.	Exhibit P-4/PW-4	Seizure list
5.	Exhibit P-5	Seizure list

6.	Exhibit P-6	Forwarding
7.	Exhibit P-7	Prayer u/s 52(A) sub section 2 of NDPS Act.
8.	Exhibit P-8	Charge sheet

B. Defence: NOT APPLICABLE

Sr. No.	Exhibit Number	Description
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C. Court Exhibits: NOT APPLICABLE

Sr. No.	Exhibit Number	Description
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D. Material Objects:

Sr. No.	Exhibit Number	Description
1.	MO-1	Plastic bottle containing the Brown Sugar
2.	MO-2, MO-3 and MO-4	Photographs of the seized materials

Sri Jayanta Kumar Saikia
Addl. Chief Judicial Magistrate
Nalbari