

IN THE COURT OF ADDL. C.J.M :::::::::::::::::::::NALBARI

Present: *Sri Jayanta Kumar Saikia,*
Addl. CJM, Nalbari.

(Date of judgment: 16/09/2022)

(PRC No. 590/2020)

u/s 22(a) of NDPS Act.

INFORMANT:	SI(P) Biswa Jyoti Dowari, SI(UB) of Assam Police, Belsor Police Station
REPRESENTED BY	Sri. Arjun Barman, Ld. APP
ACCUSED	Md. Hasen Ali and Md. Makshed Ali @ Mannaf Ali
REPRESENTED BY	Sri Naba Kumar Dutta and Smti Kakali Devi, Ld. Advocates
Date of Judgment	16/09/2022

Accused details

Rank of the	Name of the	Date of	Date of	Offences charge	Whether acquitted	Sentence	Period of detention
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accused	accused	arrest	release on bail	with	or convicted	imposed	under gone during trial for the purpose of section 428 of IPC
A-1	Md. Hasen Ali	03/07/2019	Accused Md. Maks hed Ali @ Mannaf Ali was allowed to go on bail on 10-07-2019 and accused	U/S 22(a) of NDPS Act	Acquitted	N/A	N/A
A-2	Md. Maks hed Ali @ Mannaf Ali						

			Md. Hase n Ali was allow ed to go on bail on 11- 07- 2019. Again the accus ed Maks hed Ali @ Mann af Ali was taken to jail hajot in				
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			conne ction with case no. Belsor PS 396/2 021 and he is in jail hajot till date.				
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APPENDIX-13

Date of offence	02/07/2019
Date of FIR	02/07/2019
Date of charge-sheet	30/09/2019
Date of framing of charges	28/03/2022
Date of commencement of evidence	08/06/2022
Date on which judgment is reserved	16/09/2022
Date of judgment	16/09/2022
Date of the Sentencing Order, if any	N/A

(J U D G M E N T)

- 1.** The prosecution case sets into motion by filing a FIR by the informant, SI(P) Biswa Jyoti Dowari, SI(UB) of Assam Police, Belsor Police Station, stating that on 02-07-2019 acting on source information he apprehended the accused persons namely Md. Hasen Ali and Md. Makshed Ali at Chamata near Indian Oil Petrol Pump and recovered 12 numbers of Codeine Phosphate and Chlorpheniramine Maleate Syrup which they were carrying to sell illegally and the items were seized at P.O. as authorized by Dy SP(HQ) Joopi Bordoloi APS at PO as per procedure of NDPS Act. During enquiry it could learn that the accused persons were dealing with drugs business since long time in the area for his personal gain with criminal intention. Hence, he has lodged this case.
- 2.** The Officer-in-charge, Belsor Police station, on receipt of the Ejahar registered Belsor P.S. Case No. 134/19, 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 03-07-2019. After completion of the investigation, the concerned I/O submitted charge sheet against the accused persons, Md. Makshed Ali and Md. Hasen Ali under Section 22(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 22(a) of NDPS Act against the accused persons, which is read over and explained to them vide order dated 28-03-2022, to which they pleaded not guilty and claimed to be tried.

4. The prosecution side examined four (04) witnesses. The Learned Assistant Public Prosecutor prayed to close the PW evidence. The PW evidence is closed as per the submission of the Ld. APP.
5. 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.
6. I have heard the arguments advanced by the Learned Counsels for both sides.

7. POINTS FOR DETERMINATION:-

- (i) *Whether the accused persons, Md. Hasen Ali and Md. Makshed Ali @ Mannaf Ali on 02.07.2019 at about 1:00 P.M., at Chamata near Indian Oil Petrol Pump under the jurisdiction of Belsor P.S. brought were bringing twelve numbers of Codeine Phosphate and Chlorpheninamine Maleate Syrup to sell illegally and thereby committed the offence under section 22(a) of NDPS Act?*

EVIDENCES OF PWs:

8. PW-1 Sri Ranjay Das deposed that he does not know the informant. He does not know the accused persons present in

the dock. **Exhibit P-1/PW-1** is the seizure list and **Exhibit P-1(1)** is his signature. In the year 2019, he was working in the shop of Angad Barman situated at Jamar tol near Oil Pump at Chamata. One police person called him to the other side of the road and took his signature after showing him the bottles. On the day of his deposition he could see the bottles in the court, which were shown to him by police when he put his signature. **MO-1** is the said bottles which was seized vide MR No. 62/2019. On the day of his deposition he could see 10 number of seized bottles. Police recorded his statement.

9. During cross-examination PW-1 says that he could not say from where police recovered these bottles i.e. MO-1. The shop where he worked situated at a distance from the petrol pump. There are other shop houses situated in between the shop where he worked and the petrol pump.

10. PW-2 SI Biswajyoti Dowari deposed that on 02-07-2019, he was on duty at Belsor Police Station as SI(P). At 1.00 PM, the then OC Belsor Police Station namely SI Kangkan Mahanta received a secret information that near Chamata Jamartol some miscreant were selling narcotic substances. As per Belsor PS GD entry no. 22 dated 2-7-2019, he along with OC Kangkan Mahanta proceeded to the place of occurrence along with other police staff. He reached at the place of occurrence and conducted search operation. On conducting search operation, he found Md. Hasan Ali and Md. Maked Ali was possessing suspecting drug i.e. 12 numbers of

Codine Phosphate and Cloropheniramine naleate syrup. Thereafter he informed DSP, Jupi Bordoloi mfor authority letter. Then DSP, Jupi Bordoloi reached at the place of occurrence and issued authority letter. **Exhibit P-2/PW-2** is the authority letter issued by the then DSP, Jupi Bordoloi. **Exhibit P-2(1)** is the signature of DSP, Jupi Bordoloi. He knows and identify her signature. Thereafter, he seized the 12 numbers of Codine Phosphate and Cloropheniramine naleate syrup on 02-7-2019 at 2.45 PM at Chamata near Indian Oil Petrol Pump acting on source inforamtion in reference to Belsor PS GD entry no. 22 dated 2-7-2019 as authorized by Deputy SP H.Q. Jupi Bordoloi at place of occurrence as per procedure of NDPS Act from the accused persons namely 1) Md. Moksed Ali, S/o- Late Mokbul Ali, Vill- Amani, Belsor, 2) Md. Hasen Ali, S/o- Md. Darbesj Ali, Vill. Barkura, Nalbari by preparing seizure list vide MR no. 52/2019 in presence of witnesses namely Md. Chand Mahammad Ali and Sri Ranjay Das. **Exhibit P-1/PW-1** is the seizure list prepared by him in his handwriting. **Exhibit P-1(2)** is his signature. **Exhibit P-1(1)** is signature of Sri Ranjay Das and **Exhibit P-1(3)** is signature of Md. Chand Mahmmad Ali who put their signature in front of him at the place of occurrence. **Exhibit P-1(4) and Exhibit P-1(5)** are the signatures of accused namely Md. Hasen Ali and Md. Moksed Ali who put their signatures in front of him at the place of occurrence. He also recorded the statements of the seizure witnesses namely Md. Chand

Mohammad Ali and Sri Ranjay Das u/s 161 CrPC. **Exhibit MO-1** are the 10 numbers of Codine Phosphate and Cloropheniramine naleate syrup which he seized by seizure list MR no. 52/2019 i.e. Exhibit P-1. He also sealed and packed the seized substances at the place of occurrence. He also prepared the sketch map of the place of occurrence. **Exhibit P-3/PW-2** is the sketch map prepared by him and **Exhibit P-3(1)** is his signature. Thereafter he proceeded to the Belsor Police Station along with the apprehended accused persons above named and the seized articles. Thereafter he lodged the FIR. **Exhibit P-4/PW-2** is the FIR and **Exhibit P-4(1)** is his signature. The IO recorded his statement u/s 161 CrPC.

- 11.** During cross-examination PW-2 deposed that the then OC Belsor Police Station received the secret information. There was no note in the MCD that he was instructed by the then OC to proceed to the place of occurrence. In Exhibit P-4, FIR, it is not mentioned that they proceeded to the place of occurrence, as per the secret information received the OC Belsor that the accused persons were selling narcotic drug substances at the place of occurrence i.e. Jamartol. He denied defence suggestion that by Exhibit P-2 i.e. the authority letter, he was not given authority to conduct any search and seizure specifically. He has not given any written information to DSP H.Q. No time is mentioned on Exhibit P-2 i.e. authority letter. Exhibit P-2 i.e. authority letter is prepared by computer

printer except the GD entry number which is in hand writing. He informed the DSP H.Q. from the possession of the accused persons the suspected articles were recovered. The authority letter Exhibit P-2 does not contain name and details of the accused persons. As per his MCD he received the authority letter at 1.45 PM on 2-7-2019. He reached at the place of occurrence at 1.25 PM on 2-7-2019 as per MCD. In MCD it is reflected that the accused persons were found at the place of occurrence when he reached at 1.25 PM. It is mentioned in the MCD that the suspected articles were found with the accused persons at 1.30 PM. As soon as he found suspected articles with the accused persons, he informed the DSP H.Q. The time is mentioned as 1.30 PM at MCD. He informed the accused persons that they have a right to get searched in presence of any Magistrate as per provision of NDPS Act. There is no note made in his MCD that he informed the accused persons that they have a right to get searched in presence of any Magistrate as per provision of NDPS Act. He has not served any written notice to the accused that they have a right to get searched in presence of any Magistrate as per provision of NDPS Act. There is no note in his MCD regarding the reply of the accused persons regarding his query that they have a right to get searched in presence of any Magistrate as per provision of NDPS Act. He has not collected any written reply of the accused persons at the place of occurrence regarding his query that they have a right

to get searched in presence of any Magistrate as per provision of NDPS Act. He denied defence suggestion that he has not informed the accused persons that they have a right to get searched in presence of any Magistrate as per provision of NDPS Act. He has not prepared any search memo before conducting search of the accused persons. He has not prepared any separate search memo for conducting search of the persons of his along with the other police staff and the police person. The revenue circle of Pachim Nalbari Chamata is situated at a distance of 500 meter from the alleged place of occurrence. He has not conducted the search in presence of any leading prominent persons of the locality. As per the seizure list Exhibit P-1 the alleged place of occurrence is Chamata, Jamartol near Indian Oil Petrol Pump. As per the seizure list Exhibit P-1, the accused were apprehended near Chamata, Jamartol. As per the seizure list the date of seizure is on 02-7-2019 at 2.45 PM. Description of seizure as per the seizure list is Codine Phosphate and Cloropheniramine naleate syrup. The description of seized article does not contain whether it were sealed packed or not, nor the manufactured date, nor it was hand prepared or company made etc. It also does not contain the containing amount, Batch number, Expiry date etc. The seizure list does not contain any signature of any Govt. Gagated officer. He denied defence suggestion that nothing was seized from the accused persons. He has not prepared any memo giving details of the way how

the seized articles were sealed and packed at the alleged place of occurrence and brought to the police station. He admitted that the packet produced before him is the packet in which he sealed and packed the seized articles on the relevant day. He packed and sealed the seized articles by applying wax. On the day of his deposition the packet produced before the court is not sealed with wax. No substances of wax is seen by him on the day of his deposition. He denied defence suggestion that the packet produced before him is not the packet in which he sealed and packed the seized articles on the relevant day. He has not prepared the sample for the forensic test. He handed over the seized articles to the then OC, Belsor Police Station SI Kangkan Mahanta at 4.00 Pm on 02-7-2019. He conducted pre-step investigation of the case by doing preparation of seizure list, recording statements of the witnesses etc. He is also the informant of this case who has lodged the FIR. He prepared the sketch map i.e. Exhibit P-3. He has not made any dwellers of the dwelling houses mentioned / drawn in the sketch map as seizure witness in connection with this case. He has not made any employee of the Petrol Pump situated near the place of occurrence as seizure witness in this case. The alleged place of occurrence is situated at a distance of 3 kilometer from the Belsor PS. He cannot say whether seizure witness Chand Mohammad stays near the Belsor Police Station or not. The house of the other seizure witness namely

Ranjay Das is situated at Rupia Bathan. He cannot say how far it is situated. It may be possible that Rupia Bathan at a distance of 3 / 4 KM from the alleged place of occurrence. He denied defence suggestion that he has not mentioned specifically in the seizure list what is the alleged place of occurrence. In his FIR i.e. Exhibit P-4, in the seizure list Exhibit P-1 and in his statement recorded u/s 161 CrPC, it is not described from which accused what quantity of the materials were recovered and seized specifically. He denied defence suggestion that he lodged false case against the accused persons without recovering any narcotic drug substances.

12. PW-3 Md. Sand Mahammad Ali deposed that he does not know the informant. He does not know both the accused persons. **Exhibit P-1** is the seizure list and **Exhibit P-1(3)** is not his signature. This is not his handwriting. He has not put his signature on any document. He knows nothing about the incident. Police has never recorded his statement.

13. The Ld. APP prayed to declare the said witness as hostile witness and prayed to allow him to cross examine the said witness. He has gone through the case diary and the statement of the witness recorded u/s 161 CrPC and the prayer of the Ld. APP is allowed. During Cross-examination by Ld. APP PW-3 denied that he visited Chamata Petrol Pump to fill, police seized narcotic substance and he put his signature as seizure

witness. He denied defence suggestion that he stated to police that he visited Chamata Petrol Pump to fill, police seized narcotic substance and he put his signature as seizure witness. He denied defence suggestion that he personally know the accused persons and to save them he is deposing falsely. During cross-examination by Ld. Defence Counsel PW-3 stated that the police have not seized anything in his presence. Police has not recorded his statement. He had neither seen the incident nor met the police.

- 14.** PW-4 (IO), WSI Pranita Taid deposed that she knows the informant SI Biswajyoti Duwari. At that time, he was on duty as SI (P) at Belsor Police Station. She can identify the accused persons present in the dock. She arrested the accused persons on the day of the incident. The incident occurred on 02-07-2019. She was on duty as WSI (P) at Belsor Police Station at that time. On that day, on source information, the informant apprehended the accused persons and recovered 12 numbers of Codein Phosphate and Clorpheniramine melate Syrup from the accused persons at Chamata near Indian Oil Pump. Informant seized the NDPS substance by preparing seizure list on the basis of GD entry no. 22 dated 02-7-2019. Thereafter, along with the seized materials and the apprehended accused persons, he came to Belsor Police station and lodged the FIR. On receipt of the FIR SI Kangkan Mahanta, OC Belsor PS regisred Belsor PS case no. 134/2019 u/s 22 (a) NDPS Act and endorsed her for

investigation of the case. She recorded the statement of the informant u/s 161 CrPC at the police station. She recorded the statements of the accused persons and arrested them. She forwarded the accused persons to the Ld. Eleka Magistrate after medical examination. She also produced the seizure list and seized material before the Eleka Magistrate to seen. She also submitted written prayer before the Eleka Magistrate u/s 52 (A) (2) of NDPS Act for preparation of certificate of inventory. She prepared the sample in presence of the Ld. Eleka Magistrate who prepared the inventory. She also got the photograph of the seized materials taken before the Magistrate. Thereafter she sent the sample for FSL report to the Directorate of Forensic Science through UBC 202 Pinku Nath. She recorded his statement u/s 161 CrPC. She received the FSL report on 28-9-2019 prepared by Scientific officer Chandan Das. Thereafter, after Completion of the investigation, she submitted charge sheet no. 128/2019 dated 30-09-2019 u/s 22 (a) NDPS Act against the accused A-1 Md. Maked Ali and A-2 Md. Hasen Ali. **Exhibit P-5/PW-4** is the charge sheet and **Exhibit P-5(1)/PW-4** is her signature. **Exhibit P-6** is the inventory of seized Narcotic Drug and Psychotropic substance. **Exhibit P-6(1)** is her signature. **Exhibit P-6 (2)** is the certificate of inventory issued by Ld. SDJM(S), Nalbari.

- 15.** During cross-examination PW-4 deposed that she was endorsed for investigation of the case on 02-07-2019 at

4.00 PM. The FIR was produced before the Eleka Magistrate on the by the concerned OC on 03-07-2019. The seizure list was seen by Eleka Magistrate as per her prayer on 03-07-2019. Inventory was prepared on 02-07-2019 as per the inventory. No date is mentioned on the certificate of the inventory. No case number nor GD Entry is mentioned on the inventory. She denied defence suggestion that the said inventory was not related to this case. The OC has written the content of the inventory and she put her signature on the inventory. In the column of mode of packing in the inventory only the letter 'A' is written. In the column of other identifying particular of seizure item of packing only number 3 is written and in the column of country and origin, number 12 is written. In all those columns there is no description of the contraband item. She produced the seized property before the court on 03-07-2019. She was endorsed on 02-07-2019 at 4.00 PM and she has not prepared any other seizure list at the time when the material were handed over to her. There is no signature of the accused persons on the hard paper box packing of the alleged seized articles. Each bottle of the seized articles contain date of packing, expiry, modify date, batch number, manufactured by etc. No mention of such details is mentioned in the inventory prepared by her nor in the seizure list prepared by the informant. She denied defence suggestion that the material object are not the same seized articles mentioned in the seizure list and in the inventory.

There are 10 numbers of bottles produced before the court today vide MR no. 56/2019. As per seizure there were 12 numbers were seized. 2 bottles were sampled for FSL. No sample memo was prepared at the time of sampling of the seized articles. No signature of the accused was taken at the time of sampling. Whatever sample was collected, was collected before the Ld. Magistrate, she has not done any sampling. The court staff has done the packing, putting seal etc on the sample packet. Two numbers of sample packets were prepared. One number of sample packet was sent to FSL and another sample packet was kept at PS Malkhana. CD does not contain any extract copy of the Malkhana register. CD does not reflect, who was in charge of Malkhana at that time. She has not recorded the statement of the in charge of the Malkhana at that time. The another packet about which she has stated that it was kept in Malkhana, has not been produced in the court on the day of her deposition. The packet which was sent to the FSL and the packet which was kept in the Malkhana has not been produced with the MR i.e. 10 numbers of bottles for comparison and verification. She denied defence suggestion that she has not investigated the case properly.

DISCUSSION, DECISION AND REASONS THEREOF:

- 16.** 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 Chlorpheniramine Maleate Syrup were found with the accused persons, who brought those for illegal sell.

17. Now, FIR i.e., Exhibit P-4 exhibited by the informant (PW-2) shows that on source information accused persons were apprehended by him and he recovered the aforesaid bottles and seized them as per authorization by Deputy SP HQ.

18. **PW-2** (informant) says in his deposition that on the basis of the GD entry no. 22 dated 02-07-2019, he along with the O/C reached at the place of occurrence and conducted search operation. He found the accused persons were possessing suspected drugs i.e., twelve numbers of Codeine Phosphate and Chlorpheniramine Maleate Syrup. He informed DSP Jupi BOrdoloi who reached at the place of occurrence and issued the authority letter i.e., Exhibit P-2. PW-2 seized the said bottles vide Exhibit P-1 in presence of witnesses and the accused persons also put their signatures into it. He exhibited the material object 1 i.e., 10 numbers of Codeine Phosphate and Chlorpheniramine Maleate Syrup. He prepared the sketch map and lodged the ejahar. Exhibit P-3 is the sketch map and Exhibit P-4 is the FIR.

19. Now coming to the cross-examination of PW-2, who is the informant of this case it is seen that the then OC Belsor Police Station received the secret information. There was no note in the MCD that he was instructed by the then OC to

proceed to the place of occurrence. In Exhibit P-4, FIR, it is not mentioned that they proceeded to the place of occurrence, as per the secret information received the OC Belsor that the accused persons were selling narcotic drug substances at the place of occurrence i.e. Jamartol.

20. He denied defence suggestion that by Exhibit P-2 i.e. the authority letter, he was not given authority to conduct any search and seizure specifically. He has not given any written information to DSP H.Q. No time is mentioned on Exhibit P-2 i.e. authority letter. Exhibit P-2 i.e. authority letter is prepared by computer printer except the GD entry number which is in hand writing. He informed the DSP H.Q. from the possession of the accused persons the suspected articles were recovered. The authority letter Exhibit P-2 does not contain name and details of the accused persons. According to the defence side, Exhibit P-2 i.e., authority letter is not as per NDPS Act and it was prepared after the alleged incident.

21. There are some of the vital anomalies also brought out by the defence side during cross-examination. As per his MCD, he received the authority letter at 1.45 PM on 2-7-2019. He reached at the place of occurrence at 1.25 PM on 2-7-2019 as per MCD. In MCD it is reflected that the accused persons were found at the place of occurrence when he reached at 1.25 PM. It is mentioned in the MCD that the suspected articles were found with the accused persons at 1.30 PM. As soon as he found suspected articles with the

accused persons, he informed the DSP H.Q. The time is mentioned as 1.30 PM at MCD.

22. He informed the accused persons that they have a right to get searched in presence of any Magistrate as per provision of NDPS Act. There is no note made in his MCD that he informed the accused persons that they have a right to get searched in presence of any Magistrate as per provision of NDPS Act. PW-2 has not served any written notice to the accused that they have a right to get searched in presence of any Magistrate as per provision of NDPS Act. There is no note in his MCD regarding the reply of the accused persons regarding his query that they have a right to get searched in presence of any Magistrate as per provision of NDPS Act. PW-2 has not collected any written reply of the accused persons at the place of occurrence regarding his query that they have a right to get searched in presence of any Magistrate as per provision of NDPS Act. He denied defence suggestion that he has not informed the accused persons that they have a right to get searched in presence of any Magistrate as per provision of NDPS Act.

23. PW-2 has not prepared any search memo before conducting search of the accused persons. He has not prepared any separate search memo for conducting search of the persons of his along with the other police staff and the police person. The revenue circle of Pachim Nalbari Chamata is situated at a distance of 500 meter from the alleged place

of occurrence. He has not conducted the search in presence of any leading prominent persons of the locality.

24. As per the seizure list Exhibit P-1 the alleged place of occurrence is Chamata, Jamartol near Indian Oil Petrol Pump. As per the seizure list Exhibit P-1, the accused were apprehended near Chamata, Jamartol. As per the seizure list the date of seizure is on 02-7-2019 at 2.45 PM. Description of seizure as per the seizure list is Codine Phosphate and Cloropheniramine naleate syrup. The description of seized article does not contain whether it were sealed packed or not, nor the manufactured date, nor it was hand prepared or company made etc. It also does not contain the containing amount, Batch number, Expiry date etc. The seizure list does not contain any signature of any Govt. Gagated officer. He denied defence suggestion that nothing was seized from the accused persons. He has not prepared any memo giving details of the way how the seized articles were sealed and packed at the alleged place of occurrence and brought to the police station. He admitted that the packet produced before him is the packet in which he sealed and packed the seized articles on the relevant day. He packed and sealed the seized articles by applying wax. On the day of his deposition the packet produced before the court is not sealed with wax. No substances of wax is seen by him on the day of his deposition. He denied defence suggestion that the packet produced before him is not the packet in which he sealed and

packed the seized articles on the relevant day. He has not prepared the sample for the forensic test. He handed over the seized articles to the then OC, Belsor Police Station SI Kangkan Mahanta at 4.00 Pm on 02-7-2019. He conducted pre-step investigation of the case by doing preparation of seizure list, recording statements of the witnesses etc. He is also the informant of this case who has lodged the FIR. He prepared the sketch map i.e. Exhibit P-3. He has not made any dwellers of the dwelling houses mentioned / drawn in the sketch map as seizure witness in connection with this case. He has not made any employee of the Petrol Pump situated near the place of occurrence as seizure witness in this case. The alleged place of occurrence is situated at a distance of 3 kilometer from the Belsor PS. He cannot say whether seizure witness Chand Mohammad stays near the Belsor Police Station or not. The house of the other seizure witness namely Ranjay Das is situated at Rupia Bathan. He cannot say how far it is situated. It may be possible that Rupia Bathan at a distance of 3 / 4 KM from the alleged place of occurrence. He denied defence suggestion that he has not mentioned specifically in the seizure list what is the alleged place of occurrence. He denied defence suggestion that he lodged false case against the accused persons without recovering any narcotic drug substances.

25. Now, from the evidence of PW-2 (informant) it is clear that he has not followed the process of search and

seizure in respect of the seized articles as per NDPS Act. NO sample was prepared by him for forensic test. In his FIR i.e. Exhibit P-4, in the seizure list Exhibit P-1 and in his statement recorded u/s 161 CrPC, it is not described from which accused what quantity of the materials were recovered and seized specifically.

26. The seizure witness PW-3 and PW-1 were also examined in this case. As per prayer of the prosecution side, PW-3 was declared hostile.

27. From the evidence of PW-1 it is seen that he is a seizure witness. **Exhibit P-1/PW-1** is the seizure list and **Exhibit P-1(1)** is his signature. In the year 2019, he was working in the shop of Angad Barman situated at Jamar tol near Oil Pump at Chamata. One police person called him to the other side of the road and took his signature after showing him the bottles. On the day of his deposition he could see the bottles in the court, which were shown to him by police when he put his signature. **MO-1** is the said bottles which was seized vide MR No. 62/2019. On the day of his deposition he could see 10 number of seized bottles. But during cross-examination, PW-1 clearly says that he could not say from where police recovered these bottles i.e., MO-1.

28. The evidence of **PW-1** shook the prosecution case as he neither knows the accused persons present in the dock nor he can say from where police recovered the bottles.

29. **PW-3** is also a seizure witness. Though prosecution side declared this witness as hostile witness still prosecution side failed to gather anything incriminating against the accused persons. PW-3 clearly says that Exhibit P-1(3) is not his signature. It is not his handwriting. He has not put any signature on any document. He knows nothing about the incident. Police has not recorded his statement. He does not know the accused. No seizure is made in his presence.

30. **PW-4 (IO)** in her evidence she says about the investigation of the case. PW-2 apprehended the accused and made the seizure. The defence side cross-examined PW-4 on the point that the inventory is not prepared as per law.

31. 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.

32. 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.

33. While going through the cross-examination of PW-4 (IO), it is seen that she was endorsed for investigation of the case on 02-07-2019 at 4.00 PM. The FIR was produced before the Eleka Magistrate on the by the concerned OC on 03-07-2019. The seizure list was seen by Eleka Magistrate as per her prayer on 03-07-2019. Inventory was prepared on 02-07-2019 as per the inventory. No date is mentioned on the certificate of the inventory. No case number nor GD Entry is mentioned on the inventory. She denied defence suggestion that the said inventory was not related to this case. The OC has written the content of the inventory and she put her signature on the inventory.

34. PW-4 (IO) also says that in the column of mode of packing in the inventory only the letter 'A' is written. In the column of other identifying particular of seizure item of packing only number 3 is written and in the column of country and origin, number 12 is written. In all those columns there is no description of the contraband item. She produced the

seized property before the court on 03-07-2019. She was endorsed on 02-07-2019 at 4.00 PM and she has not prepared any other seizure list at the time when the material were handed over to her. There is no signature of the accused persons on the hard paper box packing of the alleged seized articles. Each bottle of the seized articles contain date of packing, expiry, modify date, batch number, manufactured by etc. No mention of such details is mentioned in the inventory prepared by her nor in the seizure list prepared by the informant. She denied defence suggestion that the material object are not the same seized articles mentioned in the seizure list and in the inventory.

35. Here in the present case, during the cross-examination of the I/O (PW-4), 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 a primary evidence.

36. PW-4 also says that there are 10 numbers of bottles produced before the court on the day of his deposition vide MR no. 56/2019. As per seizure there were 12 numbers were seized. 2 bottles were sampled for FSL. No sample memo was prepared at the time of sampling of the seized articles. No signature of the accused was taken at the time of sampling. Whatever sample was collected, was collected before the Ld. Magistrate, she has not done any sampling. The court staff

has done the packing, putting seal etc on the sample packet. Two numbers of sample packets were prepared. One number of sample packet was sent to FSL and another sample packet was kept at PS Malkhana. CD does not contain any extract copy of the Malkhana register. CD does not reflect, who was in charge of Malkhana at that time. She has not recorded the statement of the in charge of the Malkhana at that time. The another packet about which she has stated that it was kept in Malkhana, has not been produced in the court on the day of her deposition. The packet which was sent to the FSL and the packet which was kept in the Malkhana has not been produced with the MR i.e. 10 numbers of bottles for comparison and verification. She denied defence suggestion that she has not investigated the case properly.

37. From the evidence of informant (PW-2) and from the I/O (PW-4) it can be seen that there are some serious lacuna which goes to the root of the prosecution story and fails to inspire confidence of this court. As such, from the materials on record, the court is not satisfied with the evidence adduced by the prosecution side.

38. 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 22(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. Hasen Ali and Md. Makshed Ali @ Mannaf Ali are acquitted from the offence under section 22(a) of NDPS Act and they are set at liberty forthwith.

The bail bonds of the accused person 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 16th day of September, 2022.

Send a copy of this judgment and order to the authority of District Jail, Nalbari to do the needful.

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	Sri Ranjay Das	Other witness
PW-2	SI Biswajyoti Dowari	Informant
PW-3	Md. Sand Mahammad Ali	Other witness
PW-4	WSI Pranita Taid	Police witness

B. Defence witnesses, if any: NOT APPLICABLE

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE 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)
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LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description
1.	Exhibit P-1/PW-1	Seizure list
2.	Exhibit P-2/PW-2	Authority letter
3.	Exhibit P-3/PW-2	Sketch map
4.	Exhibit P-4/PW-2	FIR
5.	Exhibit P-5/PW-4	Charge sheet
6.	Exhibit P-6	Inventory of seized Narcotic Drug and Psychotropic substance

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	Bottles which were seized vide MR No. 62/2019

Sri Jayanta Kumar Saikia
Addl. Chief Judicial Magistrate
Nalbari