

**IN THE COURT OF THE SPECIAL JUDGE, NALBARI**

Present: **Dr. M. Baruah, AJS**  
**Special Judge**  
**Nalbari.**

**NDPS Case No : 12/18**

**u/s-22(b)/29 of the NDPS Act.**

**State of Assam**

-Vs-

**1. Siraj Ali**

S/o- Md. Ramiz Ali

R/o- Vill- No.1 Loharkatha,

P.S- Mukalmua,

Dist- Nalbari (Assam)

**2. Abu Bakkar Siddique @ Sonmaina**

S/o- Md. Abdul Rashid

R/o- Vill- No.1 Loharkatha,

P.S- Mukalmua,

Dist- Nalbari (Assam) .....Accused persons

**Appearance :-**

For the prosecution : Mr. Dharendra Nath Barman, PP

For the defence: : Mr. Naba Kr. Dutta

: R Karim

Date of Argument : 08/07/2022

Judgment Delivered : 05/09/2022

### **Accused details:**

Rank of accused	Name of accused	Date of arrest	Date of release d on bail	Offence charged with	Acquitted or convicted	Sentence imposed	Period of detention undergone during trial
A-1	Siraj Ali	22/07/2018	01/11/2018	u/s 22(b)/29 of the NDPS Act.	Acquitted		3 months 10 days
A-2	Abu Bakkar Siddique @ Sonmaina	22/07/2018	01/11/2018	u/s 22(b)/29 of the NDPS Act.	Acquitted		3 months 10 days

## **J U D G M E N T**

1. This prosecution case in the nutshell is that ASI Kameswar Baishya lodged and ejahar on 21/07/2018 inter alia citing that O/C Ghograpar PS informed him that he received one information about apprehending two boys and one girl at Jajiabari and directed me to proceed towards Jajiabari. Informant was on night patrolling duty along with his staff and he proceeded towards Jajiabari along with his staff. When informant and SI Babul Kr. Medhi reached the place of occurrence, public handed over the two boys and one girl namely Siraj Ali, Abu Bakkar Siddique and Bhanita Barman to them. On interrogation accused persons told that they came to keep Bhanita Barman at her residence. Public handed over 120 numbers of contraband tablets to the police and police on asking documents of said contraband tablets, the accused persons were not able to show any list to the police. Later on they arrested all the accused persons and ASI Kameswar Baishya lodged the ejahar.

2. During trial after furnishing necessary copies to the accused and going through the material on record and after hearing learned counsel for accused and learned PP for the State, charge u/s-22(b)/29 of the NDPS Act was framed against the accused persons namely Siraj Ali and Abu Bakkar Siddique and same was read over and explained to the accused persons to which accused Siraj Ali

and Abu Bakkar Siddique pleaded not guilty and claimed to be tried.

3. In order to prove the charge prosecution adduced evidence of 6 no's of witness including informant and I/O of the case and exhibited 8 no's of documents. PW-1 Kameswar Baishya; PW-2 Sanjib Das; PW-3 Manash Pratim Kalita; PW-4 Gajendra Nath Deka (FSL Expert); PW-5 Bhanita Barman. Ext-1 is the ejahar; Ext-2 is the seizure list; Ext-3 is the FSL report; Ext-4 is the forwarding letter of FSL report; Ext-P-5/PW-6 is the authorization letter issued by DSP (HQ), Nalbari for seizure, packaging and collecting of the contraband items; Ext-P-6/PW-6 is the sketch map; Ext-P-7/PW-6 is the forwarding letter issued by Addl. SP (HQ), Nalbari; and Ext-P-8/PW-6 is the charge-sheet.

4. Statement of the accused persons recorded u/s-313 CrPC after closure of the prosecution evidence. The plea of the accused is total denial and they declined to adduce defense evidence.

**5. POINTS OF DETERMINATIONS:**

i) Whether the accused persons Siraj Ali and Abu Bakkar Siddique @ Sonmaina on 21/07/2017 at Jajiabari Chowk under Ghograpar P S were in party to a criminal conspiracy, to wit, to carry 120 nos of Spasmodon Capsule

in contravention of provision of the NDPS Act and thereby committed and offence punishable u/s 29 of the NDPS Act?

ii) Whether the above named accused persons on same date and place were found in possession of 120 nos of Spasmodon Capsule in contravention of provision of the NDPS Act and thereby committed and offence punishable u/s 22(b) of the NDPS Act?

## **6. Argument**

The learned Public Prosecutor submitted that a bag containing the contraband tablets were recovered from the possession of the accused persons and the witnesses have proved the same. Hence the prosecution is able to prove the charge against the accused persons.

The learned Counsel for the defense submitted that the two accused were Mohammedan and they were taking the Hindu girl to her parent's house after she fled with a Mohammedan boy and got married. Public caught the Hindu girl along with the two Mohammedan boys at night suspecting that the two Mohammedan boys might have kidnapped the girl. So they handed over the accused and the girl before the police. No contrabands were recovered from the possession of the accused persons. He further argued that if the two accused and the girl was handed over to the police, why the girl was not made an accused in this case. He submitted that the accused persons were implicated on false case. He prays to acquit the accused persons.

## **7. DISCUSSION, DECISION AND REASON THEREOF**

In this case prosecution examined six witnesses including the Investigation Officer and the FSL expert.

On scrutinizing the evidences on record, I found that the informant Kameswar Baishya adduced evidence as PW-1 and he stated that on the basis of information received from the O C Ghorgapar P S over phone that two boys and a girl has been apprehended by public at Jajiabari chowk, he proceeded to the place of occurrence. The O/C Ghograpar P S also proceeded and local people of Jajiabari handed over two boys and a girl and also 120 numbers of contraband tablets. When O/C Ghograpar PS asked the accused to produce documents for the tablets, they failed to do so. He filed the ejahar and the O/C Babul Kr. Medhi seized the contrabands. Ext-1 is the ejahar. He stated during cross examination that public recovered the contrabands.

PW-6 Sri Babul Kumar Medhi stated that he received information that two male and a female was found in suspicious manner and the public apprehended them at Jajiabari Chowk. He was informed that one of the accused namely Siraj Ali was having in possession of contraband items. Therefore he along with PW-1 Kameswar Baishya and WPC Mayarani Dihingia went to the place of occurrence. He informed SP Nalbari and DSP (HQ), Nalbari and he was issued authority letter. He stated that he searched and found 120 numbers of Spasmodon capsules from the possession of accused Siraj Ali which was packed

in black colour polythene. He seized the contrabands and prepared seizure list. Ext-P-2/PW-6 is the seizure list and Ext.-PW-2(5)/PW-6 is his signature. The girl Bhanita was a minor and she was sent to CWC. He arrested the accused for sale of contrabands and after registering the case, he took investigation of the case. The seized materials were produced before the Magistrate and the sample of it was sent to FSL for expert opinion. He collected the expert opinion report (Ext.P-3) and submitted charge sheet against the accused persons. Ext-P-8/PW-6 is the charge sheet.

On perusal of the seizure list marked as Ext-2, it is found that there are three witnesses to the seizure out of which one is the girl who was with the two accused restrained by the public at Jajiabari Chowk.

PW-2 Sri Sanjib Das is one who signed the seizure list as a witness to seizure of the contrabands. He stated that the contrabands were seized from the accused Abu Bakkar Siddique. Pw-3 Sri Manas Pratim Kalita also stated that he is a witness to the seizure of the contrabands and it was recovered in a carry bag from the possession of Abu Bakkar Siddique. Both PW-2 & PW-3 stated that some tablets were seized from the possession of the accused Abu Bakkar Siddique.

PW-5 Bhanita Barman deposed that she eloped with a boy named Muzakir Hussain who introduced himself as Rahul Sarma. She was taken to his house where she could know that the boy is a Mohammedan. Accused Abu Bakkar

Siddique is the nephew of Muzakir and accused Siraj Ali is a neighbor. She told the accused persons about the torture made to her by Muzakir and asked them to drop her at her native house. On the day of incident, both the accused persons came to drop her to her native house. But her parent did not allow her to stay and asked accused Siraj and Abu Bakkar to drop her at her relative's house at Jajiabari village. On her way to Jajiabari village along with the accused, village people assembled there enquired about her and the two accused persons. The accused persons carried a black colour polythene bag. Police arrived and seized the black colour polythene bag containing 4 to 5 strips of blue colour capsule.

PW-4 Sri G N Deka was the Director of Forensic Science, Assam and he had examined the samples sent in connection with this case. He confirmed that the samples gave positive test for Tramadol. Ext-3 is the report he submitted.

8. Now evaluating the evidences on record, I found that the girl Bhanita Barman who deposed as PW-5 was with the two accused persons when they were apprehended by public at Jajiabari Chowk. It is clear from the evidence of PW-5 that the accused persons came with her to drop her at her native house but her parents did not allow her to stay. They were apprehended by public on suspicion at Jajiabari chowk while she was going to her relative's house at Jajiabari village. Regarding the charge of recovery of



contraband from the accused persons, I found that the PW-1 stated that local people of Jajiabari handed over two boys and a girl and also 120 numbers of contraband tablets. Whereas the PW-6 stated that he searched and found 120 numbers of Spasmodon capsules from the possession of accused Siraj Ali which was packed in black colour polythene. The seizure witnesses PW-2 and PW-3 contradicted the evidence of PW-6 and stated that the seized tablets were recovered from the possession of accused Abu Bakkar Siddique. PW-5 did not say from whose possession the contrabands were recovered. Therefore there is contradiction regarding recovery of contrabands from the possession of the accused persons. If the public handed over the contrabands to police then PW-6 cannot recover it again from accused Siraj Ali. The seizure list Ext-2 shows that the contraband capsules were recovered from the possession of accused Siraj Ali. If PW-6 had made search and recovered the contrabands from Siraj Ali, then he has not complied with the provision u/s 50 of NDPS Act. These facts create doubt about the recovery of the contrabands from the possession of accused persons. As such the accused persons are entitled to benefit of doubts.

9.

### **ORDER**

In view of the aforesaid discussion and after evaluation of entire evidence on record, I hold that prosecution failed to bring home the charge u/s-22(b)/29 of the NDPS

Act against the accused Siraj Ali and Abu Bakkar Siddique beyond reasonable doubt and the accused persons are acquitted from the charge of u/s-22(b)/29 of the NDPS Act and set at liberty.

10. However, bail bonds of accused persons shall remain stands for next six (6) months u/s 437(A) Cr.P.C.

11. Send back the GR case record to the learned committal Court with a copy of the judgment.

12. The seized drug is to be destroyed through drug disposal committee.

13. Send copy of judgment to learned District Magistrate Nalbari u/s 365 Cr.P.C.

Given under hand and seal of this Court on this 5<sup>th</sup> day of September, 2022 at Nalbari, District Nalbari.

(Dr. M. Baruah)  
Special Judge, Nalbari

Dictated and Corrected by me,

(Dr. M. Baruah)  
Special Judge, Nalbari

Typed by,  
Anzima Brahma,  
Stenographer Gr.III

## **APPENDIX**

### **LIST OF PROSECUTION/ DEFENCE/ COURT WITNESSES**

**A. Prosecution**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE</b>
PW-1	Kameswar Baishya	Informant
PW-2	Sanjib Das	Independent
PW-3	Manash Pratim Kalita	Independent
PW-4	Gajendra Nath Deka	FSL Expert
PW-5	Bhanita Barman	Witness
PW-6	Babul Kr. Medhi	I/O

**B. Defence:**

NIL

**C. Court:**

NIL

### **LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS**

**A. Prosecution:**

<b>Sr. No.</b>	<b>Exhibit Number</b>	<b>Description</b>
1	Ext-1	ejahar
2	Ext-2	seizure list
3	Ext-3	FSL report
4	Ext-4	forwarding letter of FSL report

5	Ext-P-5/PW-6	authorization letter issued by DSP (HQ), Nalbari for seizure, packaging and collecting of the contraband items
6	Ext-P-6/PW-6	sketch map
7	Ext-P-7/PW-6	forwarding letter issued by Addl. SP (HQ), Nalbari
8	Ext-P-8/PW-6	charge-sheet.

**B. Defence :**

NIL

**C. Court Exhibits:**

NIL.

**D. Material Objects:**

NIL

**(Dr. M Baruah)**  
Special Judge,  
Nalbari.