

IN THE COURT OF THE SESSIONS JUDGE, UDALGURI,
ASSAM

Special (NDPS) Case No.14/2018
(U/S :20(b)(ii)(C) of NDPS Act)

State
Versus
Rohit Singh
..... Accused person.

PRESENT: Sri M. Kalita,A.J.S.,
Special Judge,
Udalguri.

APPERANCE:

For the Prosecution : Sri A. Basumatary, P.P.,Udalguri

A N D

For the accused : Mr. M.C. Narzary, Advocate.

Evidence recorded on : 25.9.18, 24.4.19, 8.5.19, 3.6.19,
17.6.19, 1.7.19, 29.7.19, 27.11.19, 19.4.21.

Argument heard on : 2.11. 2021, 6.12.2021

Judgment delivered on: 21.12.2021

J U D G M E N T

1. As unfolded by the case record, the prosecution case, in brief, is that informant Munnaf Ali, the ASI of Police, Udalguri PS got the information from reliable source about the

presence of some persons from outside Assam who had come to the area of Kathalguri by carrying with them some packets of cannabis by intending to carry the substance outside Assam. Accordingly, on the basis of source information the GDE No.145 dated 5.2.2018 was prepared by the O/C, Udalguri PS and after preparation of GD Entry the matter was accordingly informed to Dy. S.P. (HQ) and with due permission of Dy. S.P. (HQ) the informant alongwith SI Ranjit Kalita of Udalguri PS, then O/C of Udalguri PS, the Dy. S.P. (HQ) proceeded to the area situated at Kathalguri and on being searched they saw a person trying to hide something under a dome of paddy straw. Immediately police nabbed him and on being asked he identified himself as Rohit Singh of Village Narayanpur, PS.- Mehnazpur, Dist.- Azamgarh (UP) and from his possession four packets of suspected cannabis (Ganja) were seized weighing approximately of 40 KG. The seizure was accordingly made by SI Ranjit Kalita at the place of occurrence as per provision of NDPS Act. Accordingly, the informant lodged the FIR with a prayer to take necessary action against the accused. The accused alongwith seized articles were handed over to the O/C, Udalguri PS.

2. After receiving the FIR, the O/C, Udalguri PS registered a case vide Udalguri PS case No. 30/2018 U/S 20(b) of NDPS Act. The SI Ranjit Kalita was entrusted to investigate the case as Investigating Officer.

3. During the course of investigation, the investigating officer seized the recovered four packets of suspected cannabis (Ganja) approximately 40 KG. The Ganja was weighted by weighting measures which were also seized by the investigating officer in presence of witnesses. The investigating officer also seized one Adhar Card and one Election Commission of India Identity Card from the possession of the accused. The investigating officer also arrested the accused who was handed over to the police station by the informant and forwarded him to the judicial custody. Samples of the seized articles were forwarded for FSL examination and on completion of investigation the investigating officer submitted the charge-sheet against the accused for trial for committing offence U/S 20(b) of NDPS Act. Thereafter, case was registered as Special (NDPS) case and trial was taken up.

4. During the entire trial period the accused has been in jail. The copies of all relevant documents were furnished to the accused person.

5. Considering the materials on record and the statement of witnesses and upon the hearing of learned counsels of both sides the charge was framed U/S 20(b)(ii)(C) of NDPS Act. Then the content of charge was read over to the accused to which accused pleaded not guilty and claimed trial.

6. During the trial, the prosecution has examined as many as 10 (ten) PWs including the informant, FSL expert and

Investigating Officer in order to bring home the case. Then the accused has been examined U/S 313 Cr.P.C. Defence case is total denial. No DW has been examined by the defence.

7. **Point for determination of the case:-**

Whether the accused was found having the possession of cannabis (Ganja) of 40 KG whenever the search was made to him while he was intending to transport the Ganja outside Assam?

Discussion, Decision and reasons thereof:-

8. During the trial, it has been reflected that the prosecution has made to establish the guilt of accused by bringing on record the evidence regarding duly search and seizure of cannabis (Ganja) from the possession of accused. The prosecution version is that the search was duly made as per provision of NDPA Act. The inventory was prepared by the investigating officer in presence of Magistrate. The seized article was weighted by bringing two weighting machines which were also seized in presence of witnesses. The sample was sent for FSL examination and in FSL report the seized article gave positive test for cannabis. The I.O. complied with all the formalities regarding the search and seizure of the article.

9. On the other hand, the defence version is that the prosecution has totally failed to establish the facts with material of beyond reasonable doubt that accused was the owner of that house; the place where the Ganja was recovered was actually used by the accused at the relevant point of time. Due to failure of investigating officer to comply with the mandatory provision of NDPS Act, the evidence brought on record by the prosecution is totally insufficient to bring the guilt of the accused.

10. So, in view of the above position of the fact, I like to discuss the evidence of the PWs to decide whether the evidence is able to prove the charge leveled against the accused. For benefit of convenient discussion, I like to discuss the evidence of PW6, the FSL expert to decide whether the seized article was actually the cannabis (Ganja).

11. PW6, Sri Gajendra Nath Deka, the then Dy. Director, Drugs and Narcotics Division, Directorate of Forensic Science, Assam, Kahilipara, Ghy-19 has deposed that on 8.2.2018 he received one letter vide Memo No. UDL/ Crime/ FSL-23 / 2018/ 479-80 dated 7.2.2018 alongwith one parcel per messenger in connection with Udalguri P.S. case No.30/2018 U/S 20(b) NDPS Act. The parcel consists of two exhibits enclosed in a sealed envelope cover. The facsimile of the seal was found to be "S.P. UDL". On opening he found one sealed envelope; having two sealed envelope marked as Ex-"A" and Ex-"B" respectively containing 15 g dry plant materials each

marked as DN-45/2018(a) and DN-45/2018(b). On examination the Exhibits, DN-45/2018(a) and DN-45/2018(b) gave positive tests for Cannabis (Ganja). Then he forwarded the report to the S.P., Udalguri through the then Director, Sri K.C. Sarma. He has proved the report as Ext.5 and the forwarding letter of Sri K.C. Sarma as Ext.6

12. During the cross-examination, PW6 has admitted that he received dry plant materials. In the description of article he mentioned only plant material. The Ganja were of female plant. Remnants of the samples were sent to the S.P., Udalguri.

13. So, after scrutiny of the evidence of Ext.6, the FSL expert and on meticulous examination of Ext.5, it is found that as per report of FSL, the seized article gave positive test for cannabis (Ganja). During the cross-examination, the defence has failed to bring out major contradiction in the evidence of FSL expert. So, in view of absence of any major contradiction, I find that the evidence of PW6 has corroborated the contents of the Ext.5. Hence, it is found crystal clear that the seized article from which article the samples were collected was definitely cannabis (Ganja).

14. Now, I like to discuss the evidence of other PWs.

15. PW1, ASI Munnaf Ali has deposed that on 5.2.18 while he was working as ASI of police at Udalguri PS on that day at around 8.30 PM he received one source information about the presence of some persons from outside Assam who had come

to the area of Kathalguri carrying with them some packets of suspected cannabis (Ganja) which they were intending to carry outside Assam for sale. Accordingly he informed the matter to the O/C, Udalguri PS and he alongwith SI Ranjit kalita, Officer-In-Charge, Udalguri PS and the DSP (HQ), Udalguri proceeded to the area at Kathalguri and searched the house of one Rajkumar and at that moment they saw one person trying to hide something under the stack of paddy straw. They immediately nabbed the person and on being questioned the person identified himself as Rohit Singh. The informant has also identified the person in the dock. Then recovered four packets of suspected cannabis (Ganja) was found having the weight of approximately 40 KG. The recovered suspected cannabis (Ganja) was seized on the spot by SI Ranjit Kalita in presence of witnesses as per the provision of NDPS Act. Thereafter, the seized suspected cannabis (Ganja) was brought to the Udalguri PS and handed over the same to O/C alongwith the apprehended person. Then he lodged the FIR. He proved the FIR as Ext.1.

16. During the cross-examination, PW1 has disclosed that when he received the source information at that time he was on duty at the Udalguri town. The source information was received at around 7.30 PM. On receipt of the source information he immediately conveyed it to the O/C, Udalguri PS. He knew the house of Rajkumar Chouhan since before the incident where the accused was found. They (police party)

noticed the accused in front of the courtyard of Rajkumar Chouhan. At the time of conducting search though they called the local independent witness residing near the house of Rajkumar Chouhan but they were reluctant to come to be the witness of the search and seizure. However, one independent witness whose residence was at a little distance came to the spot and he wanted to be a witness of search and seizure of the suspected cannabis (Ganja) which was recovered from the possession of the accused. The independent witness was found near the place of occurrence. The suspected cannabis (Ganja) containing four packets weighing about 40 KG recovered under the stack of paddy straw as led by the accused. He did not know as to whether the confessional statement of the accused was recorded by the I.O. or not. But they (police party) collectively recovered the suspected cannabis (Ganja) containing in four packets which were kept under the stag of paddy straw. The samples of the seized suspected cannabis (Ganja) were collected by the seizing inspector at the spot. There was no Magistrate when the suspected cannabis (Ganja) were recovered from the possession of the accused which was kept under the stack of paddy straw. At the time of conducting search the owner of the house Rajkumar was found in his residence. The owner also disclosed before them that he did not know the accused.

17. PW2, Ishwar Kr. Saha has deposed that about one year ago one day at about 8/9 PM some police personnel came to

his jewelry shop and asked him to handover the electronic weighing measure to them to measure some articles. Police seized his electronic weighing machine. Thereafter, police took him to Udalguri PS along with his electronic weighing machine. From Udalguri PS he was taken to an unknown place by means of a vehicle. It took around one hour to reach that place. In that place police personnel took him into a dwelling house and in the courtyard of that house police weighed suspected cannabis (Ganja) kept in some packets with the help of weighing machine in his presence. Police obtained his signature in the seizure list. He has proved the seizure list as Ext. 2.

18. During the cross-examination he has disclosed that he did not know the owner of the house where the seized materials were weighed. He also knew nothing from whose possession the suspected cannabis were recovered.

19. PW3, Phuleswar Deka has deposed that about 2 years ago on one day while he was coming from Golma Chowk to Udalguri Town at that time the informant ASI Munaf Ali requested him and asked him to come to a grocery shop. Accordingly he came along with Munnaf Ali where he seized one measuring scale with weights. Thereafter, the informant brought him to Kathalguri. In that place informant ASI Munaf Ali weighed some suspected contraband cannabis (Ganja) which was wrapped in packets in his presence with the help of the measuring scale brought from the grocery shop. His

signature was obtained in the seizure list and he has proved the seizure list as Ext. 3.

20. In the cross-examination, PW3 has admitted that he did not know as to wherefrom the suspected cannabis (Ganja) was recovered by the police.

21. PW4, Nirmal Dey, the "Safai Karmi" of Udalguri PS has deposed that at the relevant time he was working as a "Safai karmi" at the Udalguri PS. On that day police took his signature in a white paper but nothing was shown to him before obtaining his signature. He has proved the seizure list as Ext. 4.

22. PW5, Sugrim Chouhan has deposed that about 6 months ago on one day he was coming from his working place to his residence at around 9 PM. During that time when he reached the house of his uncles then he saw some police personnel there. He immediately proceeded there and saw three packets kept in the courtyard of his uncle. Packets were opened by police in his presence and then he saw suspected cannabis (Ganja). He also saw one white coloured car near the house of his uncle. Police took his thumb impression in the seizure list.

23 During the cross-examination, he has admitted that he did not know wherefrom the three packets containing suspected cannabis (Ganja) were brought into the courtyard of his uncle. At the time of seizure of the article his uncle and his family members were present.

24. PW7, Miss Geeta @ Rita Devi, who has been declared as hostile, has deposed that she knew the informant and the accused. On 5.2.2018 while she was at her residence alone as her mother was undergoing treatment at hospital. At around 8.30 PM her father brought her mother from hospital. After couple of moments one person came to their house and asked for a glass of water. Then her father asked her to give a glass of water to that person. In the meantime police came to their residence and arrested the said person. At that time she could not identify the person.

25. During the cross-examination by the prosecution she has disclosed that she had never stated before the investigating officer that police recovered suspected cannabis (Ganja) which have been kept concealed under the straw stag in their compound.

26. During the cross-examination by the defence, PW7 has disclosed that house of Sugrib Chouhan and one Bodo person were situated adjacent to their house. There were around 10/15 other persons apart from the police persons who came to their house. She did not witness wherefrom the police recovered the suspected contraband cannabis (Ganja).

27. PW8, Raj Kumar Chouhan, who has also been declared as hostile, has deposed that about one and half years ago on one day at around 9:45 pm he reached his house from hospital where his wife was undergoing treatment. After

providing some medicine to his wife when he got ready to sleep at that time some police personnel came to his house with the accused and asked him to provide measuring scale saying that they had recovered one bag containing cannabis (Ganja) from the possession of the accused. Then he told before the police that he has no measuring scale with him. He arranged one measuring scale from the house of Ganesh Chouhan. He also arranged one small measuring scale from the house of one Gobind Basumatary. Police then weighted the recovered suspected cannabis (Ganja) and found in total 40 KG of cannabis (Ganja) contained in two bags comprising four packets. Police seized the recovered suspected cannabis (Ganja) at the spot and returned both the measuring scales to him.

28. During cross-examination by the prosecution, he has deposed that he did not stated the facts before the police that when his wife was released from hospital he along with his wife reached home at 8.30 PM and at that time one unknown person came to his house and asked a glass of water to drink. In the meantime police came to his residence and apprehended the person and police recovered from him four packets of cannabis (Ganja) weighing around 40 KG kept concealed from the stag of paddy straw belonging to him. Later on the man was taken to police station along with the seized contraband cannabis (Ganja). He has identified the

person in the dock. Police recovered and seized 40 KG of cannabis (Ganja) contained in four packets in two bags.

29. During the cross-examination by the defence, PW8 has disclosed that four police personnel at first came to his house. Later he saw at least 60 police personnel who had gathered at his residence. He did not know wherefrom the police brought the cannabis (Ganja) before taking their weighment contained in two bags in four packets. Police did not record his statement. Police only weighed the bags in front of his house.

30. PW9, Rasheshyam Chouhan has deposed that accused was not known to him. The occurrence took place on one day about one year nine months ago at around 9 PM. On that day he was coming from his residence to attend marriage ceremony of Jamuna Chouhan. While he was proceeding through the road at that time he saw some police personnel and the accused standing with them by the side of the road. Then he saw two bags in the hands of the accused. Then police asked him to stop there and told him that the said two bags contains cannabis (Ganja). He saw suspected cannabis (Ganja) in the bags. Then the police weighed the recovered suspected cannabis (Ganja) at the spot in his presence with the help of measuring scale. After weighting police prepared seizure lists and obtained his signature in the seizure lists. The weight of the cannabis (Ganja) was 40 KG. He has proved the seizure list by which the manual weight measure was seized as Ext.2 and the seizure list by which the

cannabis were seized as Ext.7. He has also proved another seizure list by which the electronic weight machine was seized as Ext.8.

31. During the cross-examination, PW9 has disclosed that he did not know as to wherefrom the accused brought the cannabis (Ganja) which was seized by police. Police were already found at the place of occurrence before his arrival. There were about 15 to 20 police personnel present at the time of search and seizure of the cannabis (Ganja) from the accused. He saw the accused at the place of occurrence surrounded by police alongwith two bags.

32. PW10 is the investigating officer Ranjit Kalita who has deposed that on 5.2.2018 while he was working as S.I. of police at Udalguri P.S. on that day at about 8:30 PM ASI Munaf Ali verbally informed over phone to the O.C. that one outsider coming from Arunachal Pradesh arrived at Kathalguri village and kept concealed some suspected articles. Then he alongwith O.C. and DSP (HQ) Moidul Islam arrived at the place immediately. Then they searched the place where suspected articles were kept concealed by the person. They found that the articles were kept concealed under the heap of straw. Then they could recover four packets of suspected Ganja under the heap of straw. Then he seized the articles in presence of witnesses by preparing the seizure list. Then the articles were measured by bringing weighing measures and

they found 40 KG of suspected Ganja in four packets. Then the person who was keeping the articles was apprehended and brought to the police station along with the recovered articles. Then the articles were kept in the safe custody of Malkhana of police station. The samples were collected containing 20 g of each sample and seized by preparing another seizure list. Then the samples were sent for examination by FSL through S.P. Udalguri. In the meantime DSP had authorised him to investigate the case. Initially the investigation was started on the basis of GD entry prepared on the verbal information of ASI Munaf Ali. ASI Munaf Ali also lodged an FIR before Udalguri P.S. on the same day and after registration of case he was assigned the duty of investigation of the case. He arrested the accused and forwarded him to the jail. During investigation he collected the FSL report and submitted the charge-sheet against the accused U/S 20(b) NDPS Act. He has proved the seizure lists as Ext. 2, Ext.4, Ext.7 and Ext.8. He has also proved the sketch map as Ext.9, the GD Entry as Ext.10 and the charge-sheet as Ext. 11.

33. In the cross-examination, PW10 has disclosed that the articles were concealed under the straw at the residential campus of one Rajkumar Chouhan. Rajkumar Chouhan was present when they arrived at the place of occurrence. The distance between the house of Rajkumar and heap of straw was 100 gauges. Though accused had confessed his guilty at the residence of Rajkumar Chouhan but his disclosure

statement was not recorded at that time. There are the residences of other people near the residence of Rajkumar Chouhan. When they recovered the suspected Ganja then they did not called the other people. He himself brought out the packets from the place where it were concealed. He cannot say the boundary of heap of straw from where the Ganja was recovered. He did not mix the Ganja by opening all the packets. He did not produce the register of Malkhana of police station. Inventory report was not prepared. On 8.2.2018 the packets of sample were sent for FSL examination by deputing one Constable Ajay Ramchiary. He has not submitted the authorisation letter before the court by which he was authorised to investigate the case. Remaining seized articles was not destroyed. The samples which were sent to FSL was not returned back from FSL.

34. From the above discussion of evidence of PWs it transpires that PW1 is the informant as well as the person who was present at the time of search and seizure of the article. He gave a detail description how he received the secret information regarding the movement of the accused at kathalguri area. He was also the witness when article was measured by measuring scale and when the samples were collected by the investigating officer. PW2 and PW3 are the person from whose possession the weighing machines were collected. PW5 is the witness in whose presence the recovered packets were opened and after opening the packets

the Ganjas were found. PW7 and PW8, though they have been declared hostile but they have categorically stated that the accused was in their house at the relevant point of time and accused was found trying to conceal the packets under the stake of straw. PW9 has also categorically stated about the facts how the bags were recovered from the possession of the accused and how the cannabis (Ganja) was measured by measuring scale. PW10 is the investigating officer. He has given the vivid picture about the search and seizure of the cannabis (Ganja) from the possession of the accused.

35. On appreciation of evidence of PWs, it is found that except few minor infirmities there is no any major contradiction and infirmities to discard the reliability of the evidence of PWs. Though the PW7 and PW8 have been declared hostile but to some extent their evidence is also very much relevant for deciding the case because they have categorically asserted that the accused was at their house at the relevant point of time though they have stated that the person only came and sought water from PW8. PW9 has supported the evidence of PW1 and PW10 regarding the search and seizure of the article and also regarding the recovery of cannabis from the possession of the accused because he was the witness when the packets were opened and found the Ganjas in the packets.

36. On meticulous examination of documents found available in the record, it is found that the investigating officer

prepared the inventory in presence of Magistrate though the investigating officer has stated in his cross-examination that inventory was not prepared. But in fact the inventory was found in the case record though it has not been exhibited by any witness but the document like inventory which is found in the case record cannot be thrown away as unnecessary document. The inventory itself shows that it was prepared in presence of Chief Judicial Magistrate, Udalguri as per provision U/S 52 A(2) of NDPS Act.

37. During the course of argument, the learned P.P. has vehemently submitted that the investigating officer conducted the search in presence of DSP (HQ) with due permission from higher authority also and the search and seizure was properly made by the investigating officer. There is no any violation of provision while search and seizure was made by the investigating officer. Moreover, the investigating officer complied with all necessary formalities for investigating the case.

38. On the other hand, the learned defence counsel has contradicted the submissions of learned P.P. on the point that the investigating officer did not comply with all relevant provisions of NDPS Act while investigating the case. Due to non-compliance of necessary provisions the investigation remains defective and on the basis of such defective investigation, the accused cannot be held guilty for having the possession of contraband article.

39. To fortify his submissions the learned defence counsel has cited following decisions of Hon'ble **Bombay High Court** and Hon'ble **Gauhati High Court**:-

(i) Mainuddin kasim Mulla Vs State of Maharashtra, reported in 1991(2) CriLC 502;

(ii) Bhim Ram & Ors Vs State of Assam, reported in 2012(1) GLT 416;

(iii) Food Corporation of India & Ors Vs Makhama & Sons(M/S) reported in 2012(1) GLT 422;

(iv) Ramesh Sahu & Anr Vs State of Assam, reported in 2011(5) GLT 108;

(v) Sh. Chanam Ranjit Meitei Vs Union of India, reported in 2010(3) GLT 361;

40. I have gone through the above decisions. The learned defence counsel basically based on the compliance of the necessary provision of NDPS Act while the investigation was done by the investigating officer.

41. For appreciating the evidence on record, the observation made by the Hon'ble Gauhati High Court in the case of Bhim Ram & Ors Vs State of Assam is very much relevant. In paragraph 11, the Hon'ble High Court has observed as

"11. The provision under Section 55 of the Act is not mandatory, rather directory but the Apex court in Gurbax Singh Vs. State of Haryana reported in AIR 2001 SC 1002, held that the I.O. cannot totally ignore

the provision and failure in compliance with the same will have a bearing on appreciation of evidence regarding arrest of the accused or seizure of the articles. It needs no repetition that P.W-5 as in-charge of the police out post as well as the I.O. of the case initiated and completed the entire process of packeting the samples of seized ganja, sending them for chemical examination and collecting the FSL report but he failed to satisfy the court how he could take action which were otherwise to be taken by the O/C of the police station concerned. His failure in informing the O/C of the police station and taking action without his knowledge and authority has a serious bearing with the bonafide of his entire action. Had the P.W-5 as i/c of the police outpost taken the aforesaid action with due permission/authority from the court, it would have been accepted as bonafide and legal. As already noted earlier, the sole independent seizure witness PW-2 stated in his evidence that he signed the seizure list as per the direction of the S.I and he did not read the contents of the seizure list. The said witness did not say that the samples were drawn from seized ganja at the Railway platform and he was a witness to the packeting of the samples and sealing of the sample packets. There is no evidence to the effect that the said independent witness, PW-2,

accompanied the police team to the police outpost and the seized ganja and the samples were put under safe custody of the in-charge of the police outpost. The said independent witness never stated that PW-5 put any seal on the sample packets and the samples of the seal was ever shown to him. There is no evidence that the seized articles were kept in the malkhana inasmuch as the prosecution never produced the malkhana register to prove that it was so kept in the malkhana till the sample packets were sent for chemical examination. It was, therefore, not proved that the seals found on the sample packets were the same with the sample seal. Here is a case where police officials who sent the sample packets for chemical examination, sent no sample seal. The default of the police outpost in- charge in sending sample packets along with sample seal provided scope for tempering although there is no allegation from the defence to that effect. The Apex court had an occasion to deal with a similar case in State of Rajasthan Vs. Gurmail Singh, reported in (2005) 3 SCC 59, wherein it is held that if link evidence adduced by the prosecution is not satisfactory, accused is entitled to acquittal in view of the loopholes in the prosecution case. In the present case several loopholes have been found as discussed earlier."

42. But in the case in hand, it has been established with cogent evidence that the sample was collected in presence of witnesses. The sample packets were kept in safe custody and without causing delay the sample was sent for FSL examination. There is no any inconsistency in evidence in this point. Hence, the submission made by learned defence counsel is found not sustainable.

43. For appreciation of evidence on record in hand, in the light of provision of Section 20 of NDPS Act, I find it necessary to present the provision at this stage.

“20. Punishment for contravention in relation to cannabis plant and cannabis.☐Whoever, in contravention of any provisions of this Act or any rule or order made or condition of licence granted thereunder,—

(a) cultivates any cannabis plant; or

(b) produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis, shall be punishable—

1[(i) where such contravention relates to clause (a) with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine which may extend to one lakh rupees; and

(ii) where such contravention relates to sub-clause (b),—

(A) and involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine, which may extend to ten thousand rupees, or with both;

(B) and involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees;

(C) and involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees: Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.]”

44. So, if the evidence brought forward by the prosecution is appreciated in reference to the above position of law, it is found that the prosecution has succeeded to prove that the accused was hiding the cannabis with intent to transport the same to outside Assam. The recovered substance is also of 40 KG. So, the accused is found for guilty of offence U/S 20(b)(ii)(C) of NDPS Act because the amount of recovered cannabis is 40 KG which is of commercial quantity. The

accused was intending to transport the same to outside Assam. There is no material in the record to hold other views.

45. Regarding the compliance of the provision of Section 42 of NDPS Act, it is also found that before making search and seizure the police informed immediately to his superior officer and the search was conducted in presence of one independent witness and in presence of DSP(HQ) though some neighbouring witnesses were reluctant to be the witness of the search. The evidence on record clearly reflects that the informant after getting source information regarding the movement of accused he immediately informed the matter to O/C, Udalguri PS as well as to DSP(HQ) and after getting due authorization the search and seizure was made. So, there is no any material on record to show that the investigating officer violated the provision of Section 42,43 and 44 of the NDPS Act.

46. During the course of argument, the learned defence counsel has submitted that the accused was not conscious about the possession of cannabis at the relevant point of time because he entered into the house of landlord and sought the glass of water. So, he was not conscious about the possession of narcotic substance. But the material on record has clearly reflected that the accused was caught when he was found hiding the cannabis under the stag of straw.

47. In this connection, I find it necessary to cite the observation made by Hon'ble High Court in the case of **Ralkhuma Chhangte Vs State of Mizoram**, reported in **2021 (2) GLT 316**. In paragraph **20**, the Hon'ble Gauhati High Court observed as:-

"20. In the case of Dharampal Singh vs. State of Punjab, reported in (2010) 9 SCC 608, the Apex Court has held that once possession is established, the accused who claims that it was not a conscious possession has to establish it because it is within his special knowledge. Further, Section 54 of the ND&PS Act, 1985, raises a presumption of possession of illicit articles and unless and until the contrary is proved, the accused has committed an offence of possession under the NDPS Act, 1985. The Apex Court held that a reading of Section 54 of ND&PS Act creates a legal fiction and presumes the person in possession of illicit articles to have committed the offence, in case he fails to account for the possession satisfactorily. Possession is a mental state and Section 35 of the Act gives statutory recognition to culpable mental state. It includes knowledge of fact. The possession therefore has to be understood in that context thereon. The Apex Court in the above case of Dharampal Singh vs. State of Punjab (supra) has held at para 16 as follows:-

"16. Once possession is established the Court can presume that the accused had culpable mental state and have committed the offence. In somewhat similar facts this Court had the occasion to consider this question in the case of Madan Lal and another vs. State of H.P.,2003 (7) SCC 465, wherein it has been held as follows:

"26. Once possession is established, the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of the presumption available in law. Similar is the position in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles.

27. In the factual scenario of the present case, not only possession but conscious possession has been established. It has not been shown by the accused-appellants that the possession was not conscious in the logical background of Sections 35 and 54 of the Act."

48. As the material on record has clearly established that the accused was found when he was hiding the cannabis under the stag of straw, so it can be presumed that the accused was the conscious possession of the cannabis. The

submission made by learned defence counsel in this point is found not sustainable in view of above material on record.

49. Another important facts which is deserved to be mentioned that the accused has only denied the allegation leveled by the prosecution. No any plausible explanation has been given by him regarding possession of cannabis.

50. Though the learned defence counsel has placed his reliance on the plea that the investigating officer while conducting the search and seizure did not comply with the provision of Section 42(2) and 52 and the investigating officer also failed to comply with the provision of Section 52 of the NDPS Act, but on scrutiny of the evidence on record, my considered view is that there is no any material to show that the police did not comply any necessary provision of the Act relating to the search and seizure. Hence, the submissions made by the learned defence counsel, in regards to the non-compliance of the necessary provisions of the NDPS Act, is found having no merit.

51. On the other hand, the evidence of informant has been adequately corroborated by the evidence of PW9, Radheshyam Chouhan, who was present at the relevant point of time and at the time of search and seizure. Even the landlord of the house and his daughter, though they have been declared hostile but they have also corroborated the evidence of informant regarding the search and seizure and recovery of the cannabis from the possession of the accused.

So, the whole evidence of the prosecution is found very much reliable, trustworthy and credible to prove the ingredients of offence U/S 20(b)(ii)(C) of NDPS Act. The evidences inspired the confidence to hold the opinion against the accused for possessing the cannabis with intent to transport the same to outside Assam.

52. For the reasons stated above, it is found that the prosecution has succeeded to prove the ingredients of Section 20(b)(ii)(C) of NDPS Act with the material beyond reasonable doubt.

SENTENCE HEARING

53. I have heard the accused on the point of sentence as provided U/S 235(2) Cr.P.C. It is submitted that accused is a young person of about 35 years old having his wife and two children and old mother. He has the responsibility to maintain them being the sole bread earner. Moreover, he has been in jail for last three years.

54. So it is submitted that in the event he is convicted & sentenced his innocent family members will suffer huge loss and great hardship. Therefore, the accused pleaded clemency while awarding sentence. Having given my anxious consideration to his pleas and taken into consideration the nature and gravity of the offence committed by him, the court must balance the punishment and societal interest in punishing the guilty. As the severe crime against society need

to be dealt with severely irrespective of the socio-economic status, religion race caste or creed and position of the accused and protection of society and deterring the criminal is the avowed object of law so keeping in mind all the relevant factors particularly the serious dimension of the case at hand, this court is of the considered view that to keep the faith of public on judiciary accused person needs to be dealt with adequately so as to award punishment commensurate with the gravity of the offence committed by him.

55. The accused is convicted under section 20(b)(ii)(C) NDPS Act and accordingly sentenced him to undergo rigorous imprisonment for a period of 10(ten) years and fine of Rs 1,00,000.00(one lakh) I/d to undergo simple imprisonment for another 6 (Six) months.

56. This court feels, the sentence of imprisonment and fine awarded to accused persons will serve the end of justice and it send a clear message to the society to open the eyes of those who have indulged in the commission of such offence at will and spoils younger generation /very future of the nation under the demonic trap of drug dealers.

57. The period of detention, if any, already undergone by accused person during the course of investigation, enquiry or trial shall be set off against the term of imprisonment as provided U/S 428 Cr.P.C.

58. Let a copy of the judgment be furnished to accused person free of cost as provided in section 363 Cr.P.C.

59. Let a copy of the judgment be forwarded to the learned District Magistrate, Udalguri as provided in section 365 Cr.P.C.

60. The seized material, except Adhar Card and I/D, be disposed of in accordance with law.

61. Let the case record be consigned to record room.

62. Judgment is signed sealed and delivered on this 21st day of December, 2021.

Dictated and corrected by me and each page bears my signatures.

(M.Kalita)
Special Judge,
Udalguri.

Special Judge,
Udalguri.

APPENDIX:

A) Prosecution witnesses:

i) PW1 Munnaf Ali.

ii)PW2 Ishwar Kr. Saha.

iii)PW3 Phuleswar Deka.

iv)PW4 Nirmal Dey.

v)PW5 Sugrim chowhan.

vi)PW6 Gajendra Nath Deka.

vii)PW7 Geeta @ Rita Devi.

viii)PW8 Raj Kr. chowhan.

ix)PW9 Radheshyam Chouhan.

x) PW10 Ranjit Kalita.

B)Defence witness: Nil.

C)Exhibits:

i) Ext.1 FIR.

ii) Ext.2, 4,7,8 Seizure lists

iii) Ext.3 Zimma Nama

iv) Ext.5 FSL Report

v) Ext.5 Forwarding report of FSL

vi) Ext.9 Sketch map

vii)Ext.10 G.D. Entry

viii)Ext.11 Charge-sheet.

Dictated and
corrected by me.

Special Judge,
Udalguri.