



CRIMINAL APPEAL NO(S). OF 2025
(Arising out of SLP (Crl.) No (s). 9446-9447 of 2025)

VERSUS

**THE STATE OF
WEST BENGAL**

....RESPONDENT(S)

J U D G M E N T

Mehta, J.

- 1.** Heard.
- 2.** Leave granted.
- 3.** The accused-appellant Nadeem Ahamed¹ has approached this Court, through these appeals by special leave, assailing the common judgement dated 17th January, 2025, passed by the Division Bench of High Court of judicature at Calcutta², whereby C.R.A. (DB) 362 of 2024 preferred by the accused-appellant under Section 374(2) of the Code of Criminal

¹ Hereinafter, referred to as ‘accused-appellant’.

² Hereinafter, referred to as 'High Court'.

Procedure, 1973³, was rejected on the ground of being time barred and delayed.

4. The accused-appellant stood convicted for the offences punishable under Sections 21(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985⁴, *vide* judgment dated 24th August, 2021 passed by the Judge, Special Court under NDPS Act and Additional Sessions Judge, 12th Court, Alipore, 24-Parganas (South), West Bengal⁵. By the order of sentence dated 26th August, 2021, the trial Court sentenced the accused-appellant to 10 years of rigorous imprisonment and a fine of Rs. 1,00,000/-. In default of payment of fine, the accused-appellant was sentenced to undergo further rigorous imprisonment for six months. As stated above, the High Court refused to entertain the regular appeal against conviction preferred by the accused-appellant and dismissed the same on the ground of delay alone.

³ For short, 'CrPC'.

⁴ For short, 'NDPS Act'.

⁵ Hereinafter, referred to as 'trial Court.'

Facts of the case

5. The prosecution case, in brief, is that on 16th July, 2018, at about 17:30 hours, seizure officer S. I. Subrata Saha, i.e., PW-2⁶ received a source information that two male persons would be coming to supply heroin in the vicinity of Pragati Maidan P.S.⁷ area in the evening of the same day. The information was reduced into writing, and a copy thereof was forwarded to the officer-in-charge of the Narcotic Cell. The seizure officer (PW-2) took permission of the officer-in-charge, and formed a raiding team. He carried the weighing scale, testing kit, packing materials, etc. and reached near Laxmi Store, which fell under the jurisdiction of the police station, at about 19:30 hours. The source informant led them to the prescheduled location, and they maintained a watch. At about 20:00 hours, the source informant pointed towards two male persons coming along the Metropolitan from south to north direction. Both of them were detained by the seizure officer (PW-2) with the help of the members of the raiding team.

⁶ Hereinafter, referred to as 'seizure officer (PW-2).'

⁷ Hereinafter, referred to as 'police station.'

6. Two independent persons were requested to stand as *panchas* in the search. The purpose of detention was disclosed to the detenues. The detenues disclosed their identities as Amit Dutta @ Rakesh⁸ (the co-accused) and Nadeem Ahamed (the appellant herein). They were informed about their right of being searched in the presence of either a Magistrate or a Gazetted officer, as per Section 50 of the NDPS Act. The detenues exercised the option to be searched in the presence of a Gazetted officer. However, no such officer was immediately available in the vicinity. Therefore, the seizure officer (PW-2) informed his superior officers.

7. At about 21:30 hours, Inspector Ananda Swarup Nayak, Additional officer-in-charge, i.e., PW-4⁹ came to the spot in uniform. He was introduced as a Gazetted officer to the detenues, and a re-confirmation was taken from both of them as to whether they desired to be searched at the spot in the presence of Gazetted officer (PW-4), to which they agreed.

⁸ Hereinafter, referred to as 'co-accused'

⁹ Hereinafter, referred to as 'Gazetted officer (PW-4)'

8. After observation of necessary pre-search formalities, the search of the co-accused Amit Dutta was conducted and, from his possession, narcotic drug, suspected to be heroin, weighing about 130 gms., some cash, a ring and a key, being personal properties, were recovered. The accused-appellant was also searched and narcotic drug, suspected to be heroin, weighing 125 gms. was found stashed on his person, along with some cash, being his personal property. A small portion of the narcotic drug recovered from each of the detenues was tested by the drug testing kit, which gave a positive indication for the presence of heroin.

9. The gross weight of the narcotic substance recovered from both the detenues came to be about 255 gms. and thus, the seized contraband was treated to be of commercial quantity. The drug packets so recovered were seized, and sampling procedure was carried out. One sample each, weighing 10 gms., was collected from the individual packets recovered from the detenues. The drug packets were then packed, sealed and labelled as Mark A and Mark B. The samples collected from both the sealed packets were marked as S1 and S2.

10. As the detenues failed to give a satisfactory explanation for the possession of the contraband, both of them were arrested at about 00:30 hours on 17th July, 2018. After investigation, a charge-sheet was filed against both the accused for the offences punishable under Sections 21(c) and 29 of the NDPS Act. The samples collected from the recovered drug packets were forwarded to the Forensic Science Laboratory¹⁰ for analysis. The test report concluded that both the samples tested positive for the presence of heroin.

Proceedings before the trial Court

11. The trial Court framed charges against the accused-appellant and the co-accused for the aforesaid offences. They pleaded not guilty and claimed trial. The prosecution examined as many as 6 witnesses, exhibited 21 documents and produced 22 *muddamal* articles in order to prove its case.

12. After hearing the arguments advanced by the Public Prosecutor and the defence counsel, the trial Court proceeded to convict and sentence the

¹⁰ For short, 'FSL'.

accused-appellant, as well as the co-accused, as above, vide judgment dated 24th August, 2021.

Proceedings before the High Court

13. The accused-appellant seems to have been prevented from filing an appeal in time, and the appeal against conviction under Section 374 (2) CrPC, assailing the judgment of the trial Court, was presented in the High Court with a delay of 1183 days.

14. It was pleaded in application for condonation that the delay was caused due to the accused-appellant's financial crisis. However, the High Court refused to condone the delay in filing of the appeal. The High Court also took note of the fact that during the intervening period, the appeal of the co-accused, being Criminal Appeal No. 325 of 2021, had been rejected *vide* judgment dated 23rd September, 2022. Accordingly, the appeal preferred by the accused-appellant was dismissed solely on the ground of delay. The said judgement dated 17th January, 2025 has been assailed in the present appeals by special leave.

15. Learned counsel for the accused-appellant has advanced the following arguments to challenge his conviction: -

- i). That there was a total non-compliance of the mandatory provisions of NDPS Act in conducting the search and seizure.
- ii). That the search and seizure proceedings are full of contradictions and inherent improbabilities and the same do not inspire confidence.
- iii). That the prosecution case is vitiated because the seizure officer (PW-2) failed to comply with the mandate of Section 52A of the NDPS Act, inasmuch as neither were samples drawn in presence of a Magistrate, nor was any inventory prepared as per the requirement of law.
- iv). That the trial Judge committed a grave error in holding that the recovered contraband weighed more than the commercial quantity. In this regard, it has been fervently contended that there is no evidence on record to show that the accused-appellant and the co-accused were known to each other from before, or that

either of them had the prior knowledge of the contraband allegedly possessed by the other.

16. He further submitted that conviction of the accused-appellant for the offence punishable under Section 29 of the NDPS Act is absolutely illegal, for the simple reason that there is no evidence to justify the charge of conspiracy.

17. The respondent-State of West Bengal, though duly served, has chosen not to put in appearance before this Court.

18. We have heard and considered the submissions advanced by learned counsel for the accused-appellant at the bar, and have gone through the impugned judgment and the material placed on record.

Discussion and Analysis

19. At the outset, we may note that the rejection of the appeal preferred by the accused-appellant by the High Court, simply on the ground of delay, was uncalled for.

20. Given the fact that the accused-appellant was incarcerated in prison from the date of his initial apprehension, the rejection of the appeal on the sole ground of delay was too harsh and unjustified in our

opinion. The High Court should have condoned the delay and decided the appeal on merits, keeping in view the fact that the accused-appellant was in custody, and did not have the financial wherewithal to file the appeal. We could have remanded the matter to the High Court for reconsidering the appeal on merits, but that would cause further delay. Thus, we have proceeded to consider the merits of the matter.

21. Upon examination of the material placed on record, we are of the firm opinion that the view taken by the trial Court, that the contraband recovered in this case was more than the commercial quantity, is unjustified and illegal on the face of the record.

22. Merely because the two accused, walking side-by-side, were apprehended simultaneously, and both were carrying narcotic drug concealed on their body, the said coincidental happening, by itself, would not give rise to an inference that either of them had the knowledge about the contraband being carried by the other. These facts may give rise to a suspicion, but suspicion, however, cannot take place of proof.

23. If at all the prosecution intended to bring home the charge of conspiracy, and club the contraband recovered from both the accused persons together,

then positive proof to support the charge of conspiracy had to be presented. Such proof could not be substituted with mere inferences or conjectures. Positive and tangible evidence was necessary to establish, beyond reasonable doubt, that both accused persons had prior knowledge of the contraband in the other's possession. However, upon carefully analysing the evidence available on record, we find that, apart from the bald allegation that both the accused were seen walking together and were searched one after the other, not even a semblance of evidence was led by the prosecution, which can substantiate the charge of prior conspiracy between the two accused persons.

24. Rather, upon going through the judgment of the trial Court, we find that, without there being any such evidence, the trial Court simply raised a presumption as to the culpable mental state by proceeding on an assumption that both the accused were conscious and aware of the contents of the packets stashed on the other's person. Such assumption is erroneous and absolutely unjustified on the face of the record for want of evidence to substantiate the same. Reference in this regard can

be made to the judgment of this Court in the case of ***Amarsingh Ramjibhai Barot v. State of Gujarat***¹¹.

The relevant observations from the aforesaid judgement are reproduced below:-

“7. The learned counsel appearing for the appellant urged only one contention in support of the present appeal. He contended that the High Court fell into an error in taking the total quantity of the offending substances recovered from the two accused jointly and holding that the said quantity was more than the commercial quantity, warranting punishment under Section 21(c) of the NDPS Act. He contended that as far as the appellant is concerned, the High Court erred by assuming that there was criminal conspiracy within the meaning of Section 29 of the NDPS Act, and erroneously proceeded under the said section. The High Court fell into a further error of assuming that because Section 29 was applicable, the total quantity of opium recovered was 920 grams plus 4.250 kg. The counsel urged that because of this error the High Court took the wrong view that the total opium recovered was of “commercial quantity” and, therefore, attracted Section 21(c) of the NDPS Act.

8. Although, at first blush, the argument of the learned counsel appeared attractive, on careful appreciation of the facts on record we are satisfied that the High Court judgment is fully justified and needs to be upheld. **It is true that the High Court proceeded on the footing that there was a criminal conspiracy between the appellant and the deceased Danabhai Virabhai Rabari. In our view, however, there was no warrant for this conclusion at all as there is**

¹¹ (2005) 7 SCC 550

no evidence to suggest that there was any such abetment and/or criminal conspiracy within the meaning of Section 29 of the NDPS Act. The appellant and Danabhai Virabhai Rabari were found together, but individually carrying the recovered substances. Hence, it was not possible for the High Court to take the view that Section 29 was attracted.”

(Emphasis supplied)

25. Therefore, we have no hesitation in holding that the trial Court committed a grave factual error in concluding that the contraband heroin recovered from two distinct individuals could be clubbed together, so as to be covered under the commercial quantity (above 250 gms.).

26. That apart, we find certain glaring infirmities and discrepancies in the process of seizure, and collection of samples undertaken by the seizure officer (PW-2). Before we delve into these inconsistencies, it is imperative to set out the sequence of events commencing from 16th July, 2018, when the seizure officer (PW-2) received source information regarding two individuals suspected of carrying heroin, who were expected to be coming near Laxmi Store, Pragati Maidan, Kolkata with the contraband. Upon locating the suspected persons,

the seizure officer (PW-2) proceeded to search them, which yielded to the discovery of a heat-sealed transparent polythene packet containing a brown powder/granular substance weighing 125 gms. from the accused-appellant Nadeem, along with certain Indian currency notes. A similar packet was recovered from the co-accused Amit Dutta, which weighed 130 gms. Both packets were punctured, and one sample each was drawn from the same for the purposes of sealing, marking, and labelling.

27. Upon returning to the police station, the seizure officer (PW-2) handed over the seized contraband to Ashish Das, the Officer-in-charge¹², directing him to prepare an inventory list. The contraband was thereafter deposited in the *malkhana* by S.I. Sandip Datta (PW-1). The investigation was subsequently entrusted to S.I. Debashish Barman (PW-6)¹³, along with custody of the seized contraband and the collected samples. On 20th July, 2018, investigation officer (PW-6) attempted to deposit the samples at the FSL. However, they were not accepted as he arrived

¹² Hereinafter, referred to as 'officer-in-charge'

¹³ Hereinafter, referred to as 'investigation officer (PW-6)'

after the stipulated time. It was only on 23rd July, 2018 that investigation officer (PW-6) succeeded in depositing the samples for analysis.

28. While the above sequence of events appears to form a continuous chain, the inconsistencies that emerge therein are of such gravity that they cannot be disregarded. These are as follows:-

(a) The seizure officer (PW-2) collected only one sample each from the packets of the contraband seized from the individual accused. This is in direct contravention of Clause 2.2 of Standing Order No. 1 of 1989 dated 13th June, 1989, issued by the Anti-Smuggling Unit, Department of Revenue, Ministry of Finance. The said clause stipulates:

“2.2 All the packages/containers shall be serially numbered and kept in lots for Sampling. Samples from the narcotic drugs and psychotropic substances seized, shall be drawn on the spot of recovery, **in duplicate**, in the presence of search witnesses (Panchas) and the person from whose possession the drug is recovered, and a mention to this effect should invariably be made in the panchnama drawn on the spot.”

(Emphasis supplied)

The said standing order came up for consideration before this Court in the case of **Noor**

Aga v. State of Punjab¹⁴, wherein it was held that the guidelines mentioned above should not only be substantively complied with, but in a case involving penal proceedings, the rigours of such guidelines may be insisted upon. The manifest non-compliance of the standing order in the present case is, therefore, of considerable import.

(b) According to the testimony of the seizure officer (PW-2), the Gazetted officer (PW-4), the independent witnesses, and the detenues, including the accused-appellant, signed the seizure list and the labels affixed to the seized material, including the loose labels. However, when the sample packets were opened before the trial Court during evidence of the seizure officer (PW-2), the labels contained only the signatures of the witnesses, the seizure officer (PW-2) and the *panch* witness. The signatures of the accused were conspicuously absent from the packets, as per the observations recorded in the deposition. To substantiate this conclusion, we proceed to extract the relevant excerpts from the seizure officer's (PW-2) evidence: -

¹⁴ (2008) 16 SCC 417.

“Thereafter, I seized the contraband as well as the currency notes and the key under a seizure list in presence of independent witnesses, the Gazetted Officer as well as the member of the raiding team and both the accused persons put their signature in the seizure list. The GO, independent witnesses as well as the other member of the raiding team also put their signatures in the seizure list.

...

The witness is shown a brown coloured envelope it is sealed and labeled and marked as S1 he identify the packet and stated that the packet contained 10 gms of heroin from the mother packet.

The brown coloured packet is marked as MAT EXT - I. The label on the brown packet is marked as MAT EXT - II and the signature of the witness in the label is marked as MAT EXT - II/1.

The brown coloured envelope is opened in presence of Id. Advocate. From inside the packet a transparent polythene packet containing brown coloured powder/granules is brought out. The witness identifies the powder to be the sample which he had taken from the mother packet.

The packet is marked as MAT EXT - III. A loose label is also brought out from inside the brown packet. The label is marked as MAT EXT - IV and the signature of the witness in it is marked as MAT EXT - IV/1.

The witness is shown a brown coloured envelope it is sealed and labeled and marked as 'S2'. He identifies the packet and stated that the (sic) packet contained 10 gms of Heroin from the mother packet.

The brown coloured packet is marked as MAT EXT - V. The label on the brown packet is marked as MAT EXT - VI and the signature of the witness in the label is marked as MAT EXT - VI/1.

The brown coloured envelope, is opened in presence of Id. Advocate. From inside the packet a transparent polythene packet containing brown coloured powder/granules is brought out. The witness identifies the powder to be the sample which he had taken from the mother packet.

The packet is marked as MAT EXT - VII. A loose label is also brought out from inside the brown packet. The label is marked as MAT EXT - VIII and the signature of the witness in it is marked as MAT EXT - VIII/1.

After the sample, of 10 gms was taken out the remaining portion of the contraband along with the transparent packet recovered from the possession of Amit Dutta was sealed labeled and pack in a brown coloured packet after repairing the punctured portion. The same was marked as 'A'.

The witness is shown a brown coloured envelope which is sealed and labeled and marked as A" he

identifies the packet and stated that it contained remaining portion of the contraband which was recovered from the possession of the accused Amit Dutta (sic). The brown coloured (sic) envelop is marked as **MAT EXT - IX**. The label in it is marked as **MAT EXT - X**. The signature of the witness on the label is marked as **MAT EXT - X/1**.

The brown coloured envelope is opened in court in presence of the Ld. Advocate.

A loose label and a polythene packet containing brown coloured substance is brought out.

The witness identifies the brown substance and stated that it is the remaining portion of the contraband recovered from the possession of Amit Dutta.

The packet containing the brown substance is marked as **MAT EXT - XI**. The loose label is marked as **MAT EXT - XII** and the signature of the witness in the label is marked as **MAT EXT - XII/1**.

After the sample of 10 gms was taken out the remaining portion of the contraband along with the transparent packet recovered from the possession of Amit Dutta was sealed labeled and pack in a brown coloured packet after. Repairing the punctured portion. The same was marked, as 'B'.

The witness is shown a brown coloured envelope which is (sic) sealed and labeled and marked as

'B'. He identifies the packet and stated that it contained the remaining portion of the contraband which was recovered from the possession of the accused Nadim Ahmed. The brown coloured envelop is marked as **MAT EXT - XIII**. The label in it is marked as **MAT EXT - XIV**. The signature of the witness on the label is marked as **MAT EXT - XIV/1**.

The brown coloured envelope is opened in court in presence of the Ld. (sic) Advocate.

A loose label and a polythene packet containing brown coloured substance is brought out.

The witness identifies the brown substance and stated that it is the remaining portion of the contraband recovered from (sic) the possession of Amit Dutta.

The packet containing the brown substance is marked as **MAT EXT - XV**. The loose label is marked as **MAT EXT - XVI** and the signature of the witness in the label is marked as **MAT EXT - XVI/1**."

A careful perusal of the above excerpt from the evidence of the seizure officer (PW-2) makes it clear that neither the mother packet, nor the sample packets, bore the signatures of the accused-appellant, when the same were opened and exhibited as material objects, during evidence of the aforesaid witness before the trial Court.

(c) The seizure officer (PW-2) did not prepare any separate seizure list for the samples drawn from the accused-appellant. Likewise, no “test memo” or “weighment chart” was prepared at the spot. Furthermore, no specimen seal memo was proved by the seizure officer (PW-2), as is evident from his deposition at trial.

(d) Although two independent witnesses were associated with the investigation, only one was examined by the prosecution, without any explanation for the omission to examine the other.

(e) Most significantly, there has been a complete failure by the prosecution to comply with the important procedural requirement, as provided under sub-section (2) of Section 52A of the NDPS Act.¹⁵ A perusal of the record makes it clear that there

¹⁵ “Where any [narcotic drugs, psychotropic substances, controlled substances or conveyances] 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, psychotropic substances, controlled substances or conveyances] containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the [narcotic drugs, psychotropic substances, controlled substances or conveyances] 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, psychotropic substances, controlled substances or conveyances] 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,

was no effort whatsoever, either by the seizure officer (PW-2), or the officer-in-charge, to undertake the procedure of sampling and inventory in presence of a Magistrate, in light of the aforesaid provision. The trial Court also noted that the seizure officer (PW-2) has even failed to state as to whether any inventory list had been prepared at the time of the raid.

29. In view of the above discussion, this Court is compelled to hold that there has been a complete and unexplained failure to adhere to the requirements of Section 52A. Neither representative samples were drawn in the presence of a Magistrate, nor was the inventory list prepared and certified, as required by law. These lapses strike at the very root of the prosecution case, rendering the integrity of the seizure and sampling process wholly doubtful.

30. We may hasten to add that the procedure under Section 52A of the NDPS Act has not been considered to be mandatory by this Court, but the facts taken cumulatively, i.e., the non-drawing of the samples in light of the Standing Order no. 1 of 1989, and the

photographs of [such drugs, substances or conveyances] 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.”

complete non-compliance of Section 52A of the NDPS Act, makes the entire procedure of seizure and sampling a total farce, and thereby, unworthy of credence.

31. In this view of the matter, we are of the firm opinion that the FSL report loses significance on account of the flawed sampling procedure undertaken by the seizure officer (PW-2), coupled with the fact that there has been a total failure by the officer-in-charge to comply with the procedure provided under Section 52A of the NDPS Act.

32. In the wake of discussion made hereinabove, we are of the firm opinion that the FSL report cannot be read in evidence and consequently, there is no acceptable evidence on record to prove that the article recovered from the accused-appellant was the narcotic drug heroin, as defined under the Schedule to the NDPS Act.

33. Consequently, the impugned judgments do not stand to scrutiny and are hereby quashed and set aside. The accused-appellant is acquitted of the charges. He shall be released from custody forthwith, if not wanted in any other case.

34. The appeals are allowed accordingly.

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

.....**J.**
(ARAVIND KUMAR)

.....**J.**
(SANDEEP MEHTA)

NEW DELHI;
AUGUST 05, 2025.