GAHC010019482026

2026:GAU-AS:12128

IN THE GAUHATI HIGH COURT
HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

Crl.A./144/2026

Hobiqul Islam,
S/o-Sirajul Islam,
R/o-Nagabandha,
P.S.-Lahorighat,
Dist.-Morigaon, Assam-782105.

.....Appellant

-Versus-

State of Assam,
Represented By The Public Prosecutor, Assam.

.....Respondent

For Appellant — Mr. A. Atreya, Advocate.

For Respondent — Mr. K.K. Das, Additional Public Prosecutor.

WITH

Crl.A./192/2023

Nijut Bormoholia,
R/o-Bondaijharni,
P.S.Dhekiajuli,
P.O.-No. 2 Pirakata,
Dist.-Sonitpur, Assam,

Pin-784110.

.....Appellant

-Versus-

State of Assam,
Represented By The Public Prosecutor, Assam.

<u>.....Respondent</u>

For Appellant — D.K. Medhi, Advocate.

For Respondent — Mr. K.K. Das, Additional Public Prosecutor.

Date of Hearing : **30.07.2026.**

Date of Judgment : **24.08.2026.**

BEFORE
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

JUDGMENT AND ORDER

[1] Heard Mr. D.K. Medhi, the learned counsel for the appellant in Criminal Appeal No. 192/2023 as well as Mr. A. Atreya, the learned counsel for the appellant in Criminal Appeal No. 144/2026. Also heard Mr. K.K. Das, the learned Additional Public Prosecutor appearing for the State respondent.

[2] By this common judgment, this court proposes to dispose of two criminal appeals, which arise out of the same judgment of the trial court, namely, Criminal Appeal No. 144/2026 filed by the appellant, Hobiqul Islam and the Criminal Appeal No. 192/2023 filed by the appellant, namely, Nijut Bormoholia. Both the appeals are directed towards judgment and order

dated 22.12.2022, passed by the court of the learned Special Judge, Udalguri in Special (N) Case No. 04/2020, whereby both the appellants were convicted under Sections 20(b)(ii)(C) of the NDPS Act, 1985 and were sentenced to undergo rigorous imprisonment for a period of 10 years each as well as to pay a fine of Rs. 1,00,000/- (Rupees One Lakh) only each and in default of payment of fine to undergo further simple imprisonment for 6(six) months.

[3] The facts relevant for consideration of both the appeals, in brief, are that on 15.02.2020, the Officer-in-Charge of Mazbat Police Station got an information through reliable sources regarding transportation of *ganja* by two persons in a *swift dezire* vehicle from Lalpani towards Mazbat. Accordingly, the General Diary Entry was made in Mazbat Police Station, numbered as Mazbat PS GDE No. 268 dated 15.02.2020 and a *naka* checking was organized at Bahipukhuri Line No. 12 Orang-Rupa Road. During *naka*-checking at about 11:00 AM, one *swift dezire* (Metallic Grey colour) bearing Registration No. AS 12 P 3916 was intercepted by the police personnel and two occupants were found inside the vehicle.

[4] During interrogation of both the occupants (appellants) they admitted that they were bringing 30 kg of suspected cannabis in the rear cabin of the vehicle from Rowta Majuligaon under Mazbat Police Station. Accordingly, the said suspected 30kg of cannabis were seized.

[5] Thereafter, on being led by the present appellants, another 75 kg of suspected cannabis was recovered from the residence of one Jayanta Daimary at Rowta on the same day at about 2:30 PM. However, said Jayanta Daimary could not be apprehended. Later on, one Ruhit Kr. Chetry (S.I. of Police) lodged the First Information Report before the Officer-in-Charge of Mazbat Police Station. On the basis of the FIR, Mazbat Police Station Case No. 12/2020 was registered under Section 20(c) of the NDPS Act, 1985 and the investigation was initiated. After completion of the investigation, charge sheet was laid against both the appellants as well as one Jayanta Daimary (showing him as absconder) under Section 20(b)(ii)(C) of the NDPS Act, 1985.

[6] Both the appellants faced the trial by remaining in custody. After considering the materials on record and after hearing both the sides, the trial court framed the charges against both the present appellants under Section 20(b)(ii)(C) of the NDPS Act, 1985. When the charges were read over and explained to the present appellants, both of them pleaded not guilty to the same and claimed to be tried.

[7] To bring home the charges, the prosecution side examined as many as 7(seven) prosecution witnesses and also exhibited certain documents.The present appellants were also examined under Section 313 of the Code of Criminal Procedure 1973, during which they denied the truthfulness of the testimony of the prosecution witnesses and pleaded their innocence.

However, they did not adduce any evidence in their defence. Ultimately, by the judgment and order which has been impugned in these appeals, both the appellants were convicted and sentenced in the manner as already described in paragraph No. 2 of this judgment, hereinbefore.

[8] The point to be determined in this appeal is as to whether the trial court has correctly convicted and sentenced both the appellants under Section 20 (b)(ii)(C) of the NDPS Act, 1985.

[9] Before considering the rival submissions of learned counsel for both the sides, let us go through the evidence of the prosecution witnesses, which are available on record.

[10] The PW-1, namely, Chandra Deka, has deposed that on one day, about one year ago, the police of Mazbat police station took his weighing scale to the police station to measure some article. Later on, he was called to the police station to take back his weighing scale, which was given in *zimma* to him. He exhibited Seizure List as Exhibit-2 and Exhibit-3 as well as *zimma nama* as Exhibit – 4. During his cross-examination, the PW-1 has stated that he could not say as to what was written on the papers on which his signature was obtained.

[11] The PW-2, namely, Birmal Daimary, has deposed that about two years prior to his deposing before the court, police of Mazbat police station went to the residence of Sri Jayanta Daimary of his village and he came to know from the police that *ganja* was recovered from his house. Police seized the

ganja packets and obtained his signatures on the seizure list. He exhibited the seizure list as Exhibit-4 as well as the seizure list by which sample of *ganja* was obtained as Exhibit-5.

[12] During cross-examination, the PW-2 has stated that on the date of seizure, he did not saw the present appellants at the house of the said Sri Jayanta Daimary. He also deposed that his signatures over the seizure lists were obtained in his own residence and he did not go to the house of Sri Jayanta Daimary at the time of recovery of *ganja*.

[13] The PW-3, namely, Sri Sudama Panikar, has deposed that on the day of alleged incident in the year 2020 at about 7:30 AM, the police of Mazbat police station called him over telephone. Thereafter, he went to the Mazbat police station and there he came to know that one Bolero vehicle was seized by police. He further deposed that police obtained his signatures in five seizure lists as at that time he was working as VDP **secretary**. He exhibited Exhibit-4, 5, Exhibit-3, 2 and Exhibit-1. During cross-examination, PW-3 has deposed that his signatures were obtained on the seizure list at the police station.

[14] The PW-4, namely, Real Daimary, has deposed that in the month of February 2020 police came to their village in search of Sri Jayanta Daimary. He deposed that he came to know about the incidents, but he did not go to the residence of the accused.

[15] The PW-5, namely, Sri Ruhit Kr.Chetry, S.I. of Police, who is the informant of the case, has deposed that on 15.02.2020, while he was working as S.I. of Police at Mazbat Police Station, the Officer-in-Charge of Police Station, got an information regarding transportation of *ganja* by two persons in a *swift desire* vehicle from Lalpani towards Orang. Thereafter, at about 10:46 AM, he along with the Officer-in-Charge of Police Station and some other police personnel proceeded to Bahipukhuri Tea estate, Line No.12 and arranged Naka checking there. He further deposed that within 15-20 minutes thereof, one *swift desire* vehicle was found coming from Lalpani side. When the driver of the said vehicle noticed the police party, they slowed down the vehicle. The vehicle was, thereafter, intercepted and was searched.

[16] During search of the vehicle, six numbers of white plastic packets were found inside the dickey. He further deposed that, thereafter, the vehicle along with the occupants, of the said vehicle as well as the recovered packets were brought to the police station. There it was found that the said bag contained suspected *ganja*. On weighing of the suspected *ganja*, it was found to weigh 30kg approximately. Thereafter, the PW-5 collected the samples of *ganja* at the police station.

[17] The PW-5 has further deposed that thereafter, on the basis of the information given by the occupants of the said vehicle, they searched the house of one Jayanta Daimary at Rauta Majuli Village and recovered 75 kg of suspected *ganja*

therefrom. He further deposed that thereafter; he seized the recovered *ganja* and prepared the seizure lists and obtained the signature of the seizure witness. Thereafter, he lodged the FIR. He exhibited the seizure lists by which weighing machine was seized as Exhibit-1. He also exhibited the seizure lists of the vehicle as well as 30kg of *ganja* as Exhibit-2, seizure lists of samples of *ganja* as Exhibit-3 and seizure lists of 75 kg of *ganja* as Exhibit-4 and seizure list of samples of *ganja* as Exhibit-5. He also exhibited GD Entry No. 268 dated 15.02.2020 as Exhibit-6 as well as the FIR as Exhibit-7.

[18] During cross-examination, the PW-5 has deposed that when the accused persons and recovered materials were brought to the police station, no independent persons were with them. He also deposed that *ganja* and sample packets were sealed in presence of the Magistrate. He has also deposed that the house of Jayanta Daimary was searched in presence of the present appellants.

[19] The PW-6, namely, Sri Dhruba Jyoti Hazarika, who is the forensic laboratory expert, has deposed that on 19.02.2020 while he was posted as Joint Director in the Directorate of Forensic Science, Assam, Kahilipara. On that day, he received one parcel from the Director in connection with Mazbat P.S. Case No. 12/2020. The parcel consisted of three exhibits enclosed in sealed envelope. The facsimile of the seal was found to be of "one rupee". He deposed that during examination of the exhibits, he found positive test for

cannabis (*ganja*). He exhibited the FSL report as Exhibit-P8 and the forwarding report as Exhibit-P9.

[20] During cross-examination, the PW-6 has deposed that he could not remember whether any separate paper containing the impression of seal or facsimile impression was received or not. He also deposed that after completing the examination, he sent back the remnants of sample to the forwarding authority.

[21] The PW-7, namely, Sri Raja Irsad, S.I. of Police, has deposed that on 15.02.2020, while he was working as Officer-in-Charge of Mazbat Police Station, he received an FIR from one Ruhit Kr. Chetry, S.I. of Police of Mazbat Police Station. On the basis of the said FIR, he registered Mazbat P.S. Case No. 12/2020 and initiated the investigation. He further deposed that at the time of filing of the FIR, the informant had also handed over recovered contraband and seizure list, along with the apprehended accused at the police station.

[22] He further deposed that on 16.02.2020, he produced the seizure lists, along with the seized articles before the Magistrates and sample packets were sent for forensic examination through S.P., Udalguri. He exhibited the authorization letter from DSP (HQ), Udalguri as Exhibit P-10, the sketch maps as Exhibit P-11 and P-12 as well as the charge sheet as Exhibit P-13.

[23] During the cross-examination, the PW-7 has deposed that the authority letter was signed on 19.02.2020 whereas, the incident took place on 15.02.2020. He has further deposed that he did not prepare any inventory in connection with the case. Neither he has submitted any compliance report to the higher authority.

[24] Mr. D. K. Medhi and Mr. A. Atreya, the learned counsel for the appellants, have submitted that the trial court erred in convicting the appellants under Section 20(b)(ii)(C) of the NDPS Act, 1985 without taking into consideration that the prosecution side has failed to even prove the seizure of the contraband in this case. They submit that in the instant case neither the seized *ganja* was produced before the trial court during the trial nor any inventory of the same was exhibited before the trial court. They submit that by not preparing an inventory of the seized *ganja*, the prosecution side has clearly violated the mandatory provisions contained in Section 52A of the NDPS Act, 1985 and on that count itself they are entitled to be acquitted.

[25] They further submit that there is no material on record to indicate that the sample of the seized contraband were drawn in presence of a Magistrate as required under the provisions of the NDPS Act, 1985. Rather, from the evidence of the witnesses, it appears that the sample was drawn at the place of seizure itself, which is contrary to the provisions contained in the NDPS Act, 1985.

[26] They further submit that none of the seizure witnesses, whose signatures were obtained in the seizure list which were exhibited before the trial court, have deposed that the contraband were seized in their presence. Rather, they have given contrary evidence regarding seizure of the contraband.

[27] The learned counsels for the appellants further submit that the prosecution side has also failed to establish that chain of custody in respect of the sample drawn from the contraband was properly maintained. They submit that though the PW-5 has clearly stated that the samples were not sealed in his presence and that it was sealed by the PW-7 in presence of Magistrate, however, PW-7 in his deposition has stated that the search and seizure was made by PW-5 and he did not say anything about sealing of the samples. They further submit that the prosecution side has failed to exhibit any test memo which was prepared at the time of collecting of the sample and sending the said sample for forensic examination before the forensic laboratory. The learned counsels for the appellants have thus submitted that the conviction of the appellants in the above-mentioned case has been made by the trial court on the basis of conjectures and surmises and not on the basis of unimpeachable evidence on record. They submit that even the basic facts regarding the seizure of the contraband from the present appellants were not proved by the prosecution side. As such, they submit that the conviction and sentence imposed on the appellants by the trial court is

liable to be set aside and the appellants are entitled to be released from custody forthwith.

[28] In support of their submissions, the learned counsel for the appellants have cited following rulings: -

i. ***"Bharat Aambale Vs. State of Chhattisgarh"*** reported in ***"2025 SCC OnLine SC110";***

ii. ***"Md. Manirut Jaman Vs. State of Assam"*** reported in ***"2024 SCC OnLineGau 1511";***

iii. ***"State of Rajasthan Vs. Gurmail Singh"*** reported in ***"(2005) 3 SCC 59";***

iv. ***"State of Uttar Pradesh Vs. Hansraj Alias Hansu"*** reported in **"(2018) 18 SCC 335";**

v. ***"State of Rajasthan Vs.Bher Singh"*** reported in **"*(2009) 16 SCC 293";***

vi. ***"Ashok @Dangra Jaiswal Vs. State of M.P."*** reported in ***"(2011) 5 SCC 123";***

vii. ***"Jitendra And Another Vs. State of M.P."*** reported in **"(2004) 10 SCC 562."**

[29] On the other hand, Mr. K.K. Das, the learned Additional Public Prosecutor, has submitted that the trial court has rightly convicted the appellants under Section 20(b)(ii)(C) of the NDPS Act, 1985 on the basis of credible ocular evidence, and as such the said conviction is not required to be interfered with by the court in this appeal.

[30] He submits that the evidence of PW-5 as well as PW-7 clearly shows that the contraband was recovered from the possession of the present appellants and the seizure of the same was made in presence of independent witnesses. He submits that though the seized contraband was not exhibited before the trial court and neither the inventory of the same was prepared, however, the oral testimony of prosecution witnesses clearly established seizure of the contraband from the present appellants. As such, he submits that the fact of conscious possession of the contraband by the present appellant's remains proved in this case.

[31] He, therefore, submits the prosecution case has been proved by the prosecution side by adducing reliable evidence, and any interference with the same by this court is not justified on any count. He, therefore, prays for dismissing the instant appeal.

[32] I have considered the submissions made by the learned counsel for both sides and have gone through the materials available on record. I have also gone through the rulings cited

by the learned counsel for both sides in support of their respective submissions.

[33] In the instant case, it appears that no inventory of the seized contraband was prepared in terms of Section 52A of the NDPS Act, 1985. It also appears that nothing is there on record to indicate that the samples were drawn in presence of the Magistrate, rather the materials on record indicate contrary to the same, i.e., the samples of the seized contraband were drawn in the police station itself.

[34] Further, it also appears that neither the inventory has been prepared nor the seized contraband was produced before the court during trial. As to what happened to the seized contraband could not be comprehended on perusal of the records. Though, in paragraph No. 50 of the impugned judgment, the trial court directed the seized materials to be destroyed in accordance with law, however, the law in this regard is clearly stated in Section 52A of the NDPS Act, 1985. It appears that in the instant case, the procedure laid down in Section 52A of the NDPS Act, 1985 has not at all been followed by the Investigating Agency.

[35] The provisions contained in Section 52A of the NDPS Act, 1985 are held to be mandatory in nature in several rulings of the Apex Court. The penal provisions of NDPS Act, 1985 prescribes very harsh punishment for the offender, therefore, it is the incumbent duty of the prosecution side that the

mandatory procedural requirement to be followed by the prosecution in such cases are to be strictly adhered to. Any lapse on that count would dent the prosecution case and the accused will get an advantage due to suchprocedural lapses.

[36] In the instant case, the seizure witnesses have not been able to prove the seizure of contraband, contrary to what has been held by the trial court. The PW-1 has categorically stated that he is unable to say what was written in the papers where his signatures were obtained. The PW-2, who is also one of the seizure witnesses has also said that police obtained signatures in the seizure list in his residence and he did not go to the place where the *ganja* was recovered. Whereas, PW-3, who is another seizure witness has also admitted that police obtained his signatures in the seizure list at the police station, i.e., not at the place where seizure was made. PW-4 has also not gone to the place where the seizure was made. Thus, none of the seizure witnesses has been able to prove the fact of recovery and seizure of the seized contraband from the possession of the present appellants.

[37] Under such circumstances, the conviction of the appellants and sentence imposed on them by the trial court, in the considered opinion of this court,is not sustainable.

[38] For the reasons discussed in the foregoing paragraphs, this court is of the considered opinion that the trial court has erred

in convicting and sentencing the appellants under Section 20(b)(ii)(C) of the NDPS Act, 1985.

[39] Accordingly, the impugned judgment is hereby set aside.

[40] The appellants in both the above-mentioned appeals are acquitted of charges under Section 20(b)(ii)(C) of the NDPS Act, 1985.

[41] The appellants shall be released forthwith, if not wanted in connection with any other case.

[42] Both the aforesaid appeals are, accordingly, allowed.

[43] The Registry is directed to send back the trial court records to the concerned court, along with a copy of this judgment immediately.

JUDGE

Comparing Assistant

Munmun Boruah

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