

(2023) 05 CAL CK 0025
In the Calcutta High Court

Case No : Criminal Appeal (DB) No. 15 Of 2022, IA NO: C.R.A.N.1 Of 2022

Hazrat Ali Molla @ Hazrat Ali Molla & Ors.

APPELLANT

Vs

State Of West Bengal

RESPONDENT

Date of Decision : 08-05-2023

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 20(b)(ii)(C), 29, 50, 52, 52A, 52A(4)
Code Of Criminal Procedure, 1973 — Section 161, 313, 428

Citation : (2023) 05 CAL CK 0025

Hon'ble Judges : Debangsu Basak, J;Md. Shabbar Rashidi, J

Bench : Division Bench

Advocate : Manjit Singh, Gaganjyot Singh, Biswajit Mal, Abhishek Bagal, Akbar Laskar, Sanjoy Bardhan, Ranadeb Sengupta, Debjani Dasgupta

Final Decision : Disposed Of

Judgement

Md. Shabbar Rashidi, J

1. The appeal is directed against the judgment of conviction dated December 08, 2021 and order of sentence dated December 10, 2021, passed by learned 4th Additional Sessions Judge, Alipore, South 24 Parganas in connection with Sessions Trail No. 3(1) of 2018 arising out of Sessions Case No. 1 (9) Of 2017.

2. By the Impugned Judgement of Conviction, the appellants were convicted for the offence punishable under Section 20 (b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985. By the impugned order of sentence, all the three appellants were sentenced to undergo rigorous imprisonment for 12 years and to pay a fine of Rupees one lakh and in default of payment of fine to undergo imprisonment for a further period of six months.

3. On May 31, 2017, one Dababrata Sikder, sub-inspector, ADRS, DD, lodged a written complaint with the officer-in-charge of Taratala PS to the effect that on May 31, 2017 at about 14.30 hours, he received a credible source information

that male persons would be coming to sell/supply charas in Taratala PS area in the afternoon. The information was reduced into writing and forwarded to the officer in charge ADRS, DD. Upon due permission, a raiding team was formed at about 15. 00 hours. The de facto complainant along with the raiding team left the office at Lalbazar for the spot along with the raiding team, source, weighing scale, narcotic drug testing kits, packing materials and other accessories.

4. The raiding team reached near Hi-Tech centre, Hi-Tech Logistics Ltd. on 1/1 Taratala Road at about 16. 30 hours. The source led the raiding team to the spot where they started maintaining watch. At about 17. 00 hours, the source pointed out towards male persons who were coming along Taratala Road. The de facto complainant detained the aforesaid three persons with the help of the raiding team on the road in front of Hi-Tech Centre and disclosed his identity and the purpose of their detention. Meanwhile, a small crowd gathered. The de facto complainant requested them to be a witness to the search and seizure. Two persons from the crowd volunteered to stand witness.

5. Upon interrogation, the three detained persons disclosed their identity as the appellants. Thereafter, the de facto complainant served written option to the detained persons informing their legal right to be searched in presence of a Magistrate or a Gazetted Officer. The detained persons were also explained the implication of the words Magistrate and Gazetted Officer. The detained persons agreed to be searched on the spot in presence of a Gazetted Officer and refused to go anywhere else. A search for Gazetted Officer was made in the locality but could not be found. The de facto complainant informed his superior officer whereupon, at about 19.00 hours, Inspector Tapan Kumar Mandal, additional officer-in-charge, Taratala PS came to the spot in uniform. He was introduced as a Gazetted Officer to the detained persons and the witnesses.

6. The said Gazetted Officer served the second option in writing upon the detained persons whereupon they reiterated to be searched at the spot in presence of a Gazetted Officer. The detained persons agreed to search the person of the searching officer and the raiding team and upon such search, nothing objectionable could be found.

7. Thereafter, the de facto complainant proceeded to search the detainees. One black coloured bulletin packet from the right hand of the appellant Hazrat Ali Molla, which was found to contain five pieces of solid materials of cannabis resin commonly called charas having the characteristic smell of charas weighing about 356 grams and cash of Rs. 110/- from his chest pocket was recovered. On search of the appellant, Susanta Sarkar, a black coloured polythene packet was found in his right hand containing nine pieces of solid materials of cannabis resin commonly known as charas having the characteristic smell of charas weighing about 565 gm and cash of Rs. 120/- from his chest pocket was recovered. Similarly, upon search of the appellant Fajar Ali Darji, one black coloured polythene packet was found in his right hand containing 11 pieces of solid materials of cannabis resin commonly known as charas having characteristic

smell weighing about 351 gm and cash of Rs. 150/- from his chest pocket was recovered.

8. The recovered articles were tested by the de facto complainant with the help of testing kit and were found positive for the presence of charas. The recovered articles were then weighed with the help of weighing machine which showed a total of 1 kg and 272 grams. The aforesaid contraband articles along with the cash recovered from the possession of the appellants were seized under a seizure list prepared by the de facto complainant on May 31 2017. The seized articles and cash were sealed and labelled separately with distinct markings on the spot in presence of a Gazetted Officer and the accused persons and all of them put their signatures/left thumb impressions on the seizure list.

9. The written complaint also disclosed that the detained persons failed to produce any satisfactory explanation for the possession of charas. As such, they were arrested at the place of detention at about 22.00 hours upon due service of the memo of arrest. The de facto complainant also examined the witnesses and the Gazetted Officer at this spot and recorded their statements in the streetlight. Thereafter, the detained persons along with the seized articles were brought to Taratala Police Station together with the other relevant documents concerning the case and the same were handed over to the officer in charge with a request to prepare an inventory list under the NDPS Act.

10. On the basis of such written complaint, Taratala PS Case No. 100/2017 dated May 31, 2017 under Section 20(b) (ii) (c)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 was started against the appellants. The police took up an investigation and on completion of the investigation submitted charge sheet. Accordingly, charges under Section 20(b)(ii)(c)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 were framed against the appellants on January 31, 2018, to which they pleaded not guilty and claimed to be tried.

11. In order to bring home the charges, the prosecution examined as many as 5 witnesses. In addition, the prosecution also relied upon certain documentary as well as material evidences.

12. Upon conclusion of the prosecution evidence, the appellants were examined under Section 313 of the Code of Criminal Procedure where the appellants claimed innocence having been falsely implicated in the case. The appellants adduced six defense witnesses in all. They also relied upon certain documentary evidence which were marked as Exhibit A and Exhibit B.

13. The sub- inspector of police who conducted the raid was examined as PW 1. He stated that on May 31, 2017, he received a source information regarding a transaction of narcotic drugs. He informed the matter to the officer in charge of his department in writing (Exhibit 1). After obtaining due permission from the Assistant Commissioner, A. R. S., DD (Exhibit 2), he proceeded for conducting raid along with a raiding team at about 15. 30 hours along with the source and being equipped with testing kit, weighing scale, brass seal and other necessary

articles. They reached near Hi-Tech Logistic under PS Taratala at about 16.30 hours.

14. It was further stated by PW 1 that the three detainees agreed to be searched in presence of a Gazetted Officer. Since PW 1 did not get a Gazetted Officer in the locality, he informed his superior officer, the officer in charge of ADSR, DD for arranging a Gazetted Officer. Thereafter, the additional officer in charge came to the place of occurrence in official robe. The entire matter was reported to his notice and, thereafter, he sought the second option in writing upon the appellants (Exhibit 3).

15. After observing all legal formalities, PW 1 proceeded to search the appellants and on such search, one (from each) black coloured polythene carry bag was recovered from the possession of the three detained persons containing 356 grams, 565 grams and 351 grams of charas from the respective possession of the detained persons i.e. the appellants namely Hazrat Ali Molla, Dinesh Sarkar and Fazar Ali Dorzi. Besides, a sum of Rs. 110, Rs. 120 and Rs. 150 respectively, were also recovered from the possession of the appellants. PW 1 also stated that after such search, the recovered articles were seized under a seizure list prepared on the spot in presence of the Gazetted Officer, the witnesses and the detained persons who signed on the seizure list. Accused Fazar Ali Dorzy put his Left Thumb Impression on the seizure list. PW 1 tendered the seizure list which was marked as Exhibit 4. He has also stated that he gave the first option to the appellants in writing and the appellants put their signature/Left Thumb Impression on such option which were tendered in evidence and Marked as Exhibit 5 collectively. PW 1 also stated that he weighed the seized contraband and tested the same with the help of testing kits. He also packed, labelled and sealed the recovered articles.

16. PW 1 proved his signature on the label attached to the sealed packet of the contraband opened in court (Mat Exhibit I, II and III respectively). He also tendered the packets containing the seized cash (Mat Exhibit IV, V and VI respectively). He also proved his signature on the labels attached to such packets.

17. PW 1 also stated that upon interrogation, the appellants failed to produce any valid document or satisfactory answer for the possession of contraband for which the appellants were arrested under proper arrest memo prepared at the place of occurrence. The appellants signed/put their Left Thumb Impression on such memo of arrest. Upon completion of the search and seizure, PW 1 also examined the Gazetted Officer and the witnesses under Section 161 of the Code of Criminal Procedure.

18. Thereafter, PW 1 came back to Taratala PS with the appellants and the seized articles. He prepared a written complaint by typing the same in the computer of the PS and handed over the same to the officer in charge of Taratala PS together with the arrested accused persons and the seized contraband. He tendered the

written complaint which was marked as Exhibit 12. PW 1 also stated that after submitting such written complaint, he returned to his office at Lalbazar and prepared a report which he submitted to his superior. Such report was marked as Exhibit 13.

19. The officer who acted as a Gazetted Officer deposed as PW 2. He has stated that on May 31, 2017, a search and seizure was conducted at 1/1, Taratala Road. Being instructed by his superior, he went to the place of occurrence by lodging a GDE to act as a Gazetted Officer at 19.00 hours. Going there, he was introduced by PW 12 with that three detained persons. He served the second option upon the said persons. He also informed the aforesaid persons if they were agreeable to be searched in presence of a Gazetted Officer whereupon the appellants agreed to be searched in his presence.

20. PW 2 also stated that after observing the formalities, the detained persons were searched one by one in his presence. Upon such search, contraband charas and some cash money was recovered from the respective possession of the three detained persons. The contraband was tested with the help of testing kits which tested positive for charas. He further stated that 356 grams of charas was recovered from Hazrat Ali Molla whereas 565 grams of charas from Dinesh Sarkar and 351 grams of charas was recovered from the possession of Fazar Ali Dorzi. The aforesaid articles were seized by PW1 under a seizure list which was signed by PW2, besides the 2 independent witnesses and the accused persons. He also stated that accused Fazar Ali Dorzi put his Left Thumb Impression upon the seizure list. The seized articles were packed, sealed and labeled by PW1 with distinct markings 'A' to 'F'. The witness identified the sealed packets and his signatures on its labels in court. He has also stated that the appellants failed to give any satisfactory answer for the possession of contraband for which they were arrested. PW 2 also stated that he was interrogated and his statement was recorded by PW 1 under Section 161 of the Code of Criminal Procedure. PW 2 also lodged GDE after returning to Taratala PS at about 23.10 hours. He has proved the GDEs lodged by him which were marked Exhibit 14 & 15.

21. A police officer from Taratala PS deposed as PW3. He stated that on May 31, 2017, he was directed by the officer in charge to receive her written complaint seized Alamats and the arrested accused persons. PW 3 received the aforesaid articles along with the arrested persons and lodged a GDE in this regard which he tendered at the trial (Exhibit 16). PW 3 also filled up the formal First Information Report (Exhibit 17) and started case. He deposited the seized Alamats in the PS Malkhana. PW3 proved the relevant entries in the Malkhana Register which was marked Exhibit 18. He also identified the appellants in court as the persons who were handed over to him. He has also stated that he received a total of six packets. He proved his signatures on such packets in court.

22. He also produced the seized Alamats appellants in court with a prayer for police custody which was allowed. Later on he handed over the case diary, the accused persons on police custody to SI Kalyan Biswas of Narcotic Cell DD

Lalbazar, in terms of a direction from DCDD, Special and lodged a GDE in this regard which he proved at the trial (Exhibit 19).

23. One of the independent witnesses was examined as PW 4. He has stated that on May 31, 2017 at about 5.00/5.30 p.m. he was returning from Esplanade to his house to Taratala Road. On the way he saw a gathering near High-Tech Logistic Centre. He further stated that while he was standing there, one police officer came and disclosed that the persons have been apprehended for dealing in the narcotic drugs. The aforesaid persons were informed of their legal right to be searched in presence of a Magistrate or a Gazetted Officer. Sometimes later a police officer namely Tapan Mandal arrived there.

24. PW 4 also stated that on search of the police personnel, nothing was recovered. Thereafter the search was conducted upon the detained persons. On such search, narcotic substances were recovered from the possession of one of the accused. PW 4 identified two of the appellants namely Hazrat Ali Molla and Fazar Ali dorzi in court. He also identified his signatures on Exhibits 3,4 and 5 and also on the labels attached to the Mat Exhibits. He further stated that his statement was recorded on the place of occurrence itself.

25. The second investigating officer was examined as PW6. He has stated that on June 2, 2017 he was directed by his superior to cause further investigation of Taratala PS Case No 100/2017. Accordingly, he went to PS, lodged a GDE and took over charge of investigation of the said case. In course of investigation PW6 interrogated the arrested accused persons. He also received the seized alamats from Taratala PS Malkhana, making proper entries in the Malkhana register. He also took over of the custody arrested persons by making necessary entries in the lock-up register. PW6 further stated that in course of investigation he went to the First Information Report, written complaint and other materials in the case diary. He also recorded the statement of SI Goutam Roy under section 161 of the code of criminal procedure, visited the place of occurrence at 1/1 Taratala Road, in front of High-Tech Centre. Thereafter, PW6 returned to Lalbazar, deposited the seized alamats with the Malkhana of Lalbazar. He has tendered the requisition and the good and receipt issued by the Malkhana which were marked as Exhibit 22 series.

26. PW5 also sent the seized alamats for chemical examination on June 5, 2017 to State Drugs Control and Research Laboratory (SDCR), Kolkata. On August 16, 2017, PW6 received the chemical examination report which was tendered in evidence and was marked as Exhibit 23. PW6 also stated that in course of his investigation he took all the steps required under section 52 A of the Narcotic Drugs and Psychotropic Substances act, 1985. An inventory of the seized articles was prepared and certified by learned Judicial Magistrate, Alipore. Such inventory was marked as Exhibit 24. The photographs taken at the time of sampling and certification of the seized articles were tendered in evidence and marked as Exhibit 25 series. He also proved his signature on the sample packets prepared in presence of learned Judicial Magistrate.

27. After the evidence on behalf of the prosecution was concluded, the appellants were examined under Section 313 of the Code of Criminal Procedure. In course of such examination, the appellants claimed to be innocent having committed no offence at all. They also claimed to be falsely implicated in the case. One of the appellants, in such examination, stated that he was picked up by Swarupnagar Police at about 5.20 am on May 31, 2017 from his house. He claimed that the police was looking for one Pradip. He was asked by the police to identify the house of said Pradip. There the parents and wife of the said appellant i.e. Dinesh Sarkar also arrived. He was asked to call the said Pradip over phone which he did but thereafter, the phone went switched off. After that the said appellant was taken to Lalbazar. He was also taken to Taratala PS at midnight 12.00. His parents and wife visited Lalbazar Police Station at 12.00 noon. At 1.00 pm he was taken to Taratala PS where he remained detained for another two days. Thereafter, he was brought to Lalbazar where he was detained for 13 days.

28. The appellant, Fazar Ali Dorzi, in his examination under section 313 of the Code of Criminal Procedure, also came up with a similar case that he was picked up by Swarupnagar police from his residence. The police came to his house and enquired about certain phone numbers. The elder brother and wife of the said appellant went in search of the appellant Fazar Ali Dorzi to Swarupnagar police station. Thereafter three sons of the said appellant went to Lalbazar where their phones were returned. His sons also met him at Lalbazar at about 11/12 o'clock in the night and returned back to their houses. On the said date at about 11/12 in the night, the said appellant was taken to a police station and back to Lalbazar and on the following day he was produced before the court. The police took his police custody and he was detained in Lalbazar for 12 days.

29. Apart from the advancing arguments, it was submitted on behalf of the appellants that the appellants were not at all involved in connection with the case. Nothing was recovered from their possession. It was contended that the appellants were taken up from their respective houses in the morning on May 31, 2017 by the appellants personally and were taken to Lalbazar. The prosecution stated that they were arrested from the place of occurrence situated within Taratala P.S. in possession of Cannabis resin is out and out false.

30. It is also contended on behalf of the appellants that the case made out by the prosecution regarding the raid conducted within the jurisdiction of Taratala PS and a recovery of contraband articles from the possession of the appellants has submitted that the police was in search of one 'Pradip' and the appellants were arrested in connection with the said search.

31. Learned advocate for the appellants also challenged the credibility of the search and seizure. It was contended that the shop owner in front of whose shop, the search and seizure is said to have taken place was not examined as independent witness. On the contrary, the two independent persons who stood witness to the search and seizure were residents of a place far away from the place of occurrence. Moreover, they were not named in the written complaint or

the GDE lodged by the gazette officer. It was also contended that the individual one and the independent witnesses was examined on behalf of the prosecution. The other independent witness did not adduce at the trial leading to an adverse inference against the case of the prosecution.

32. Learned advocate for the appellant also pointed out certain discrepancies / contradictions in the statement of the witness examined on behalf of the prosecution. Referring to the deposition of PW4, it has been pointed out that the said witnesses failed to identify one of the appellants in Court. The same description of the identification of the particulars recovered has also been highlighted on behalf of the appellants. It has been submitted that the statement made on behalf of PW4 raises a genuine doubt regarding his presence at the place of occurrence wherefrom the search and seizure was made.

33. Learned advocate for the appellants also submits that the raiding team consisted of at least five police personnel and out of them only one has been examined as prosecution witness. It is submitted that no explanation whatsoever has been offered on behalf of the prosecution for non-production of the other members of the raiding team which necessarily entails an adverse inference. Doubts have been expressed on behalf of the appellants over the fact that the members of the raiding team have not signed on any documents including the seizure list. Moreover, the driver of the vehicle by which the raiding team reached the place of occurrence was not examined. No GDE in this regard was lodged and the official vehicle was produced on behalf of the prosecution to establish allocation of the vehicle for the purpose of conducting search and seizure. Learned advocate for the appellants also submitted the presence of the gazette officer at the relevant times and place of occurrence has been challenged on the ground that PW2 claimed to have written the second option in his own hand writing but later on it was turned out to be written by PW1 under the dictation of PW2. In the assessment of learned advocate for the appellants, the discrepancy was of such a magnitude which vitiated the entire trial.

34. It was further contended on behalf of the appellants that the polythene packets which originally contained the seized contraband were not produced at the trial. In support of such contention, learned advocate for the appellant relied upon the case of Noor Aga Versus State of Punjab and anr.) reported in (2008) 16 SCC 417. Relying upon the aforesaid decision, it was further contended that the seized contraband articles were also not produced at the trial for which the trial was vitiated and the appellant should not have been convicted.

35. It was further contended that the inventory of the seized contraband and its photographs prepared in the presence of learned Judicial Magistrate were vague and insufficient which could not have been treated as a substitute of the production of the original seized contraband. It has been contended on behalf of the learned advocate for the appellants as the provisions contained under Section 52 A (4) of the NDPS Act contemplates for proof of the inventory, photographs and the list of samples. In the instant case, however, the

prosecution has proved the photographs of the envelope allegedly containing the samples instead of samples itself, which according to the learned advocate for the appellant is fatal to the case of the prosecution. Moreover, the inventory contained no particulars of the contents of the envelopes.

36. The appellants adduced six defense witnesses in support of their case.

37. The wife of appellant Hazrat Ali Molla deposed as DW 1. She stated that on May 31, 2017 at about 5:30 AM, police came to her house and took her husband. She further stated that at first she did not open the gate as the police asked her husband to meet the officer in charge. Later on, if intervention of local panchayat Prodhan, the police was able to take her husband for interrogation. At about 1 PM on the said date, she went to Lalbazar and had her entry through Gate No. 1 by putting her Left Thumb Impression. Her identity was recorded. She was accompanied by her son Hasan Molla. She further stated that while talking to her husband she noticed to other persons present there. She later came to know of the said persons as Danish Sarkar and Fazar Ali Dorzi. She has also stated in her deposition that at that time she also noticed that parents and wife of appellant Dinesh Sarkar and three sons of Fazar Ali Dorzi were also present. She left Lalbazar through Gate No. 2 where the permission slips were taken back. She has also stated that she was informed that her husband would be released on the following day.

38. The son of appellant Hazrat Ali Molla was examined as DW 2. He has corroborated the statement made by her mother DW 1. He stated that on May 31, 2017 at 5:30 AM, police persons came to his house. They called upon his father and disclosed that they were from Lalbazar. At first father of DW 2 did not open the gate but later on upon intervention of the local panchayat Prodhan namely Din Mohamed, his father agreed to cooperate. PW 2 was asked by the police to come to Lalbazar while taking his father. Accordingly he went to meet his father at about 1 PM with his mother. He was informed by his mother that she had talked to his father and that he could not be released due to paucity of time.

39. The son of the appellant Fazar Ali Dorzi deposed as DW 3. He stated that on made 31 2017 at about three a in the morning, when they were taking 'seheri' with his father and other family members police came and asked for his father. His father was taken by the police. On enquiry, he was informed that his father was taken to the officer in charge for interrogation at Lalbazar. DW 3 also stated that on the same day at about 1 PM he along with his two brothers Bablu Dorzi and Safikur dorzi, he went to meet his father at Lalbazar. There the noticed that the parents and wife of the appellant Dinesh were also present there. DW 3 also stated that he entered into Lalbazar through Gate No.1 by putting their signature. His photographs were also taken and when he met his father, the appellants Dinesh Sarkar and Hazrat Ali Molla were also present. The wife of Hazrat Ali Molla was also present there. He was assured by the police personnel that his father would be released on the following day. He left Lalbazar through Gate No. 2 where the gate passes were taken back.

40. Brother of DW 3 deposed as DW 4. He has made a statement similar to DW 3. He stated that on May 31, 2017 at about 3 AM in the morning when his father and other family members were observing ssbery', his father was arrested by police from Lalbazar. He also stated that on the said date he along with his two brothers visited Lalbazar at about 1.30/2.00 p.m. In the morning, they visited Swarupnagar PS. He further stated that they entered into Lalbazar through Gate No. 1 where his signature and photographs were taken. He met his father and noticed that appellant Dinesh and one another person were also there. DW 4 further stated that he was informed that the officer in charge had some talks with his father and he will be released thereafter. Subsequently he came to know that his father was arrested in connection with a case of Taratala PS. He left Lalbazar through Gate No. 2.

41. Another brother of DW3 and DW4 deposed as DW 5. He has corroborated the statements made by DW 3 and DW 4. He also visited Lalbazar with his brothers to meet his father. He claimed to have entered Lalbazar through Gate No. 1 at about 1 PM. His signature's and photographs were taken at the time of entry. Thereafter he met his father where the other appellant Dinesh and his family members were also present. He has also stated that he was assured by police that his father will be released on the following day whereupon he along with his brothers exited through Gate No. 2.

42. The Punchayat Prodhan, Sk. Din Mohamed was examined as DW 6. He tendered to the documents regarding his candidature as Prodhan and that he was put on. In his deposition, he stated that on May 31, 2017, at about 5:30 AM in the morning he received a phone call from the appellant Hazrat Ali Molla informing him that police has come to his house. DW 6 rushed to the house of the said appellant and found appellant Hazrat Ali Molla and his wife with his sons Hasan Molla Mukul Molla inside the house. He also noticed police persons present there. They disclosed that they wherefrom Lalbazar PS and wanted to take appellant Hazrat Ali Molla to Lalbazar for some interrogation. He also stated that he believed the statement of the police personnel and persuaded the appellant and his family members to cooperate whereupon the appellant Hazrat Ali Molla agreed to accompany the police. Thereafter he was taken by the police. DW 6 also advised the wife and sons of the said appellant to visit Lalbazar which they did. After returning from Lalbazar, the sons of the appellant told him that his father acted on the assurance of DW 6 but the police did not keep their assurance and arrested their father in a heavy case.

43. According to the case of the prosecution, on the basis of the source information the raiding officer proceeded to conduct the raid at 1/1 Taratala Road in front of Hi-tech Centre. Therefore, he nabbed the three appellants and on search, the narcotic contrabands in the category of charas were recovered from their possession. The evidence of the officer conducting search and seizure, PW1 discloses that 356 grams of charas and a sum of Rs. 110/- was recovered from the possession of the appellant Hazrat Ali Molla. 565 grams of charas and a sum

of Rs. 120/- from the possession of the appellant Dinesh Sarkar and 351 grams of charas and a sum of Rs. 150/- was recovered from the possession of the accused Fazar Ali Darji. The evidence on record also goes to show that the appellants were first detained on the basis of the source information. Since a personal search was proposed, a notice under Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 being option one was duly served upon the detained persons. Exhibit 5 series are the option from which were served upon the appellants. Such exhibit contains the signature of the appellant Hazrat Ali Molla and Dinesh Sarkar and left thumb impression of the Fazar Ali Darji. It also bears the signature of the witnesses and also signature of at least one of the members of the raiding team.

44. According to PW1, upon service of the notice under Section 50 of the NDPS Act, when the appellants opted to be searched in presence of a gazette officer, he searched for a gazette officer in the locality and having failed to find such officer, he informed the matter to his superior. Accordingly, being instructed by his superior and making relevant entries in a GDE, PW2 arrived at the place of occurrence to act as a gazette officer being the additional officer-in-charge of Taratala PS. Upon his arrival at the place of occurrence, PW2 served the second option upon the appellant which was also received and signed by the appellant. The appellant Fazar Ali Darji put his LTI on the second option. The second option was also signed by the independent witnesses as well as the members of the raiding team Exhibit 3 series is such signature upon the form duly signed by the appellant. Therefore, on the basis of such evidence including Exhibit 3 series and exhibit 5 series, it is well-established that the search and seizure was made at 1/1 Taratala Road in front of Hi-tech Centre, Hi-tech logistic limited in due compliance with the provisions of Section 50 of the NDPS Act.

45. As noted above, contraband charas were recovered from the possession of the appellants in course of such search which was seized by PW1 under a seizure list prepared at the place of occurrence (Exhibit 4). The said seizure list dated May 31, 2017 was also signed by the appellants. The appellant Fazar Ali Darji put his left hand impression on it. It also bore the signature of the independent witnesses as well as the members of the raiding team. No explanation whatsoever has been advanced on behalf of the appellants regarding the signature / left thumb impression on the search and seizure list. Subsequently, the appellants were arrested, memo of arrest Exhibit 6, Exhibit 7 and Exhibit 8 and the inspection memos Exhibit 9, Exhibit 10 and Exhibit 11 also bear the signature/left thumb impression of the appellants. Thereafter, the appellants were taken to Taratala PS where written complaint was lodged by PW1 (Exhibit 12). On the basis of such written complaint, specific case under Section 20 (b) (ii) (c) / 29 of the NDPS Act being Taratala PS case dated May 31, 2017 was started against the appellants (Exhibit 17).

46. According to the statement of PW1, upon search and seizure and recovery of narcotic contrabands from the possession of the appellants, the seized articles

were duly sealed and labeled. The seized articles under seal and label were handed over to the officer-in-charge, Taratala PS. PW3 in his deposition has stated that he filled up the formal FIR (Exhibit 17) and started the specific case. He also received the written complaint together with the accused persons and the seized articles under the direction from the officer-in-charge of Taratala PS which he committed after lodging a GDE in this regard (Exhibit 18). He has also stated that he deposited the seized articles in the PS Malkhana. He tendered the relevant entries in the Malkhana register which was marked as Exhibit 18. Exhibit 18 goes to show that these packets containing specific markings being Exhibit A to Exhibit F were deposited with the Malkhana register. He also identified the appellant persons who were handed over to him by the police officers of ADRS. On May 31, 2017, PW3 also proved the sealed packets of the seized articles which were marked as MAT Exhibit I to MAT Exhibit VI respectively and the signature thereon. He further stated that under the direction from the Deputy Commissioner, Detective Department, he handed over the investigation of the case to PW5.

47. PW5 in his deposition acknowledged being the second investigating officer of this case, the receipt of the docket. He corroborated the testimony of PW3 that he endorsed with the investigation of the case as per the direction of the Deputy Commissioner, Detective Department Special on June 02, 2017. Being so endorsed with the investigation, he made that the officer-in-charge of Taratala PS and the previous investigating officer. Thereafter, he received the case diary and the accused persons whom he identified at the trial. He further received the seized articles being marked with A,B,C,D,E and F on proper receipt in the Malkhana register. The receipt in the register was marked as Exhibit 18. Exhibit 22 series goes to show that the second Investigating Officer deposited the seized articles with the Lalbazar Malkhana after receiving the same from the Taratala PS. He send those articles for chemical examination to SDCRL, Kolkata on June 05, 2017 and received its report on August 16, 2017(Exhibit 23). Thereafter, he submitted the charge sheet in the case. PW5 has also stated that he took steps for preparation of inventory and photographs of the seized articles in terms of Section 52 of the NDPS Act. The inventory and the photographs prepared and taken in presence of the learned Judicial Magistrate, 7th Court at Alipore was duly certified by the said magistrate (Exhibit 24 and 27). PW5 has also identified the packets containing the seized articles produced in court, which were earlier received by him (MAT Exhibit I to MAT Exhibit VI). Besides that, PW5 also stated that sampling was also done and he identified the sample packet prepared and certified by the learned magistrate (MAT Exhibit VII, VIII and IX) together with his signatures on such sample packets.

48. Therefore, from the evidence on record, it transpires that the appellants were apprehended at 1/1 Taratala Road in front of Hi-tech Logistic Limited. A search on their person was conducted after due service of notices under Section 50 of the NDPS Act. A Gazetted Officer, PW2 was engaged in the process of such search. The gazette officer PW 2 also served the second option upon the

appellants. The appellants opted and agreed in writing to be searched in presence of gazette officer. Upon such search being conducted by PW1 in presence of PW2 and independent witnesses, contraband charas was recovered from the possession of the appellants. The appellants failed to give any satisfactory answer regarding the possession of such contraband for which they were arrested and the contrabands recovered from their possession were seized. No plausible explanation is forthcoming on the part of the appellants regarding their signatures /left thumb impressions on the seizure list 4, the option forms under section 50 of the NDPS Act being Exhibit 3 series and Exhibit 5 series. The appellants also proved their signatures / left thumb impressions on the memo of arrest and the inspection memo from which they were arrested. There is no explanation regarding their signatures /left thumb impressions of such arrest memo Exhibits 6,7,8,9 and 11.

49. Thereafter, PW1 brought the seized articles and the appellants to Taratala PS where he lodged the written complaint (Exhibit 12) on the basis of which a specific case was started against the appellants under the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985. With the help of the aforesaid evidence, it is evident that the prosecution has been able to prove that the appellants were found in possession of the narcotic contraband under the category of Charas. The seized articles were sent for chemical examination by PW5. PW5 also received the report with regard to the aforesaid articles from the SDCRL, Kolkata. Exhibit 23 is the said report which proves that the articles seized from the possession of the appellants were charas which fell under the purview of the Narcotic and Psychotropic Substances Act, 1985. It further transpires from the evidence on record that the investigating officer applied for the said certification of the inventory and photographs of the seized articles which was done by learned 7th Judicial Magistrate, Alipore being Exhibit 24. The sampling was also made in presence of the learned Magistrate and the sample packets were produced in Court which were identified by the investigating officer PW5 as Exhibit 7,8 and 9. Such evidence on behalf of the prosecution goes to establish that the appellants were found in illegal possession of charas.

50. A case has been made out on behalf of the appellants that having been falsely implicated in this case. It is therefore a positive case that they were picked up by the police from their respective residences and were planted in the case with an allegation that they were carrying narcotic contraband. They have claimed to have been picked up in the early morning of May 31, 2017 and were shown in possession of narcotic substances at Taratala Road in the evening. In support of such case, the appellants have adduced six defence witnesses. The defence witnesses have stated that the appellants were picked up by the police in the early morning. They have also stated that the parents, wives and the children of the appellants visited Lalbazar. They met with the appellants in Lalbazar and assured by the police that the appellants would be released. Almost all the witnesses on behalf of the defence have stated that they entered into Lalbazar through Gate No. 1. Their signatures and photography were taken at

the time of entry. After meeting the appellants, they left Lalbazar through Gate No. 2 where the visiting passes were surrendered by DW1 to DW5. They were assured by the police that the appellants would be released but later on they came to know that the appellants were implicated in this case.

51. Besides the oral action of the defence witnesses, nothing has been produced on behalf of the defence that the appellants were actually in their village and residences when they were picked up by the police. Although they have stated that they met with the appellants at Lalbazar on that very day i.e. on May 31, 2017 and they were issued with visiting pass for entry into the Lalbazar premises but no evidence in this regard has been produced on behalf of the appellants. No steps either were taken on behalf of the appellants for the production of the visitors' register, CCTV footage from the register containing the entries regarding issuance of visitors' passes to establish that the defence witnesses actually visited Lalbazar premises on the date they claimed to have visited. The evidence itself on behalf of the defence has also not been able to establish that the defence witnesses actually visited Lalbazar premises in order to meet the appellants and that they were assured by the police that the appellants would be released. In view of that facts, we are of the opinion that the appellants have not been able to establish conclusively that they were picked up by the police from their respective residences in the early morning of May 31, 2017.

52. One of the appellants is said to have given a call upon the mobile of one Pradip at the request of the police. It has been stated that after such call by the said appellant, the said Pradip allegedly switched off his mobile. The appellants could have taken steps to bring the call detail reports on record in order to establish that he actually called in the mobile of the aforesaid Pradip.

53. As noted above, the appellants have claimed to have been planted in this case deliberately by the police. No case of alibi has been made out on behalf of the appellants. As such, the case of Darshan Singh versus State of Punjab (2016) 3 SCC 37 and Vijay Pal versus State of Haryana has no manner of application in the facts and circumstances of the present case.

54. Learned advocate for the appellant has also taken up a plea that the weight of the seized articles from the possession of the appellants is not consistent with that sent to SDCRL, Kolkata for chemical examination. In the case of Rajesh Jagadamba Avasthi reported in (2005) 9 SCC 773, the Hon'ble Supreme Court was pleased to hold that,

"14. We do not find it possible to uphold this finding of the High Court. The appellant was charged of having been found in possession of charas weighing 180.70 gm. The charas recovered from him was packed and sealed in two envelopes. When the said envelopes were opened in the laboratory by the Junior Scientific Officer, PW1, he found the quantity to be different. While in one envelope the difference was only minimal, in the other the difference in weight

was significant. The High Court itself found that it could not be described as a mere minor discrepancy. Learned counsel rightly submitted before us that the High Court was not justified in upholding the conviction of the appellant on the basis of what was recovered only from envelope A ignoring the quantity of charas found in envelope B. This is because there was only one search and seizure, and whatever was recovered from the appellant was packed in two envelopes. The credibility of the recovery proceeding is considerably eroded if it is found that the quantity actually found by PW1 was less than the quantity sealed and sent to him. As he rightly emphasized, the question was not how much was seized, but whether there was an actual seizure, and whether what was seized was really sent for chemical analysis to PW1. The prosecution has not been able to explain this discrepancy and, therefore, it renders the case of the prosecution doubtful."

55. However, in the instant case, as it transpires from the evidence on record that 356 grams + 565 grams + 351 grams i.e. a total of 1272 grams of charas was seized from the possession of the three appellants. Exhibit 24 goes to show that 1212 grams of seized contraband was certified by the learned Magistrate. The chemical examiner found remnant weight of 1275 grams of the seized contraband which was received by him. The chemical examiner received the said articles with intact seal which tallied with its specimen. The difference in weight of the seized contraband if any is too minimal to tell upon the veracity of the search and seizure. On such proposition, Learned advocate for the State has relied upon the case of State by CBI Vs Dilbagh (2004)13 SCC 99 wherein it was laid down by the Hon'ble Court that,

"11. It was next urged that in view of the difference in weight, this Court should give benefit of doubt to the respondent. It was urged that difference in weight supports the respondent that he has been falsely implicated in this case. In view of the evidence, including the evidence of the independent witnesses it is not possible to accept this submission. In our view, the defence taken appears to be highly improbable."

56. Learned advocate for the appellant relied upon the case of State of Rajasthan Vs. Gurmail Singh: (2005) 3 SCC 59. The said case, the Hon'ble Supreme Court found the link evidence adduced on behalf of the prosecution and found satisfactory and on the basis of such evidence was pleased to uphold the acquittal. However, in the present case, there is convincing evidence that the seized articles were brought to Taltala PS after completion of the search and seizure. It was deposited that the Malkhana of Taratala PS under proper entries made in the Malkhana register (Exhibit 18) on the date of the search and seizure i.e. on May 31, 2017. The said articles were received by PW5 on proper receipt in the Malkhana register on June 2, 2017 and the same was deposited with the Malkhana of Lalbazar Narcotic Cell where from it was sent for chemical examination on June 04, 2017. There appears to be no discrepancy in the chain of custody of the seized articles right from the time of its seizure till it was sent for chemical examination to State Drug Control and Research Laboratory

(SDCRL), Kolkata. The chain of custody of such article is complete and compact. Therefore, there is nothing on record to suggest any hole in the custody of the seized Alamats.

57. The learned advocate for the appellant also relied upon (2008) 16 SCC 417 Noor Aga versus State of Punjab and Anr. on the proposition that the original polythene packets recovered containing the contraband seized from the possession of the appellants were not produced before the Court. The evidence on record goes to establish that the contrabands were seized and upon such seizure, the contrabands were packed, sealed and labeled by the searching officer. These were deposited with the Malkhana of Taratala PS under the control of the first investigating officer. Later on, the second investigating officer received the same and applied for its sampling inventory and photography. The same were done in presence of learned Magistrate and thereafter the articles were sent for chemical examination, the report of the chemical examiner together with the sealed packets so sent for chemical examination were proved at the trial. Mere non-production of the polythene packets which contained the contraband at the time of its seizure from the possession of the appellants cannot vitiate the trial. The appellant has not been able to prove any prejudice cause due to non-production of the polythene packets.

58. On such proposition, the learned advocate for the State has relied upon the decision in the case of State of Rajasthan versus Sahi Ram (2019) 10 SCC 649 and Than Kunwar vs. State of Haryana (2020) 5 SCC 260. The Hon'ble Supreme in the case of Than Kunwar (Supra) was pleased to hold in following terms that's to say:

"30. The Court also went to hold in Sahi Ram [State of Rajasthan v. Sahi Ram, (2019) 10 SCC 649 : (2020) 1 SCC (Cri) 85] that if seizure is otherwise proved on record and it is not even doubted or disputed, it need not be placed before the Court. The Court further held that if the seizure is otherwise proved what is required to be proved is the fact that samples taken out of a contraband are kept intact. This Court held as follows : (SCC pp. 657-58, paras 15-16 & 18)

"15. It is true that in all the aforesaid cases submission was advanced on behalf of the accused that failure to produce contraband material before the court ought to result in acquittal of the accused. However, in none of the aforesaid cases the said submission singularly weighed with this Court to extend benefit of acquittal only on that ground. As is clear from the decision of this Court in Jitendra [Jitendra v. State of M.P., (2004) 10 SCC 562 : 2004 SCC (Cri) 2028] , apart from the aforesaid submission other facets of the matter also weighed with the court which is evident from paras 7 to 9 of the decision. Similarly in Ashok [Ashok v. State of M.P., (2011) 5 SCC 123 : (2011) 2 SCC (Cri) 547] , the fact that there was no explanation where the seized substance was kept (para 11) and the further fact that there was no evidence to connect the forensic report with the substance that was seized (para 12) were also relied upon while extending benefit of doubt in favour of the accused. Similarly, in Vijay Jain [Vijay

Jain v. State of M.P., (2013) 14 SCC 527 : (2014) 4 SCC (Cri) 276], the fact that the evidence on record did not establish that the material was seized from the appellants, was one of the relevant circumstances. In the latest decision of this Court in Vijay Pandey [Vijay Pandey v. State of U.P., (2019) 18 SCC 215] , again the fact that there was no evidence to connect the forensic report with the substance that was seized was also relied upon to extend the benefit of acquittal.

16. It is thus clear that in none of the decisions of this Court, non-production of the contraband material before the court has singularly been found to be sufficient to grant the benefit of acquittal.

18. If the seizure of the material is otherwise proved on record and is not even doubted or disputed, the entire contraband material need not be placed before the court. If the seizure is otherwise not in doubt, there is no requirement that the entire material ought to be produced before the court. At times the material could be so bulky, for instance as in the present material when those 7 bags weighed 223 kg that it may not be possible and feasible to produce the entire bulk before the court. If the seizure is otherwise proved, what is required to be proved is the fact that the samples taken from and out of the contraband material were kept intact, that when the samples were submitted for forensic examination the seals were intact, that the report of the forensic experts shows the potency, nature and quality of the contraband material and that based on such material, the essential ingredients constituting an offence are made out."

59. Therefore, as noted above, in the instant case, since the chain of the seized articles proved convincingly on behalf of the accused prosecution. Non-production of the polythene packets does not vitiate the case of the prosecution.

60. The learned advocate for the State has relied upon the case of Surindar Kumar versus State of Punjab (2020) 2 SCC 563. In the aforesaid decision, it was observed by the Hon'ble Supreme Court quoting the case of Jarlail Singh versus State of Punjab that merely because prosecution did not examine any independent witnesses, would not necessarily lead to conclusion that the accused was falsely implicated. The evidence of official witnesses cannot be distrusted and disbelieved merely on account of their official status. In the instant case, however, one of the witnesses to the search and seizure has not been examined as PW4 and he has amply corroborated the case of the prosecution. The defence was not able to extract anything favourable to them or stated the credibility of such witnesses upon his cross-examination.

61. On the basis of the discussion made hereinbefore, we are convinced that the prosecution has been able to prove the charges leveled against the appellants/convicts with the help of convincing evidence. The impugned judgment of conviction dated December 08, 2021 and order of sentence dated December 10, 2021, passed by the learned 4th Additional Sessions Judge, Alipore, South 24 Parganas in connection with Sessions Trail No. 3(1) of 2018 appears to be well

founded on the basis of convincing evidences, sufficient enough to base a conviction upon and does not warrant interference in the facts and circumstances of the case. We affirm the same.

62. Accordingly, the appeal being CRA (DB) 15 of 2022 & IA NO: C.R.A.N. 1 of 2022 are hereby dismissed.

63. In view of the disposal of the appeal, no interlocutory application survives. Consequently, connected applications, if any, shall stand dismissed.

64. Trial Court records along with a copy of this judgment and order be sent transmitted, at once, to the learned Trial Court for necessary action.

65. Period of detention already undergone by the appellants shall be set off against the substantive punishment in terms of the provisions contained in Section 428 of the Code of Criminal Procedure.

66. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

67. I agree.