

Present:

Mr. Justice Md. Shohrowardi

Criminal Revision No. 3238 of 2019

Md. Rasel Akon

...Convict-petitioner

-Versus-

The State

...Opposite party

Mr. Md. Saiful Malek Chowdhury, Advocate

...For the convict-petitioner

Mr. Md. Anichur Rahman Khan, D.A.G with

Mr. Md. Mizanur Rahaman, D.A.G with

Mr. Mir Moniruzzaman, A.A.G with

Mr. Md. Saruwar Alam Khan, A.A.G with

Ms. Nargis Parvin (Alija), A.A.G

...For the State

Heard on 06.08.2025 and 27.08.2025

Judgment delivered on 03.12.2025

On an application filed under section 439 read with section 435 of the Code of Criminal Procedure, 1898 Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and order dated 07.03.2019 passed by the Druto Bichar Tribunal and Special Sessions Judge, Barishal in Criminal Appeal No.49 of 2019 dismissing the appeal and affirming the judgment and order dated 26.04.2018 passed by the Senior Judicial Magistrate. Court No. 1, Barishal in Gouranadi Police Station Case No.13 dated 21.06.2016 corresponding G.R. No.101 of 2016 (Gouranadi) convicting the petitioner under section 19(1) table 9(Ka) of the **মাদকদ্রব্য নিয়ন্ত্রণ আইন, ১৯৯০** and sentencing him to suffer rigorous imprisonment for 6(six) months and to pay a fine of Tk. 2,000, in default, to suffer rigorous imprisonment for 1(one) month more, should not be set aside and/or pass such other order or further order or orders as to this Court may seem fit and proper.

The prosecution's case, in short, is that on 21.06.2016 at 4.30 pm, P.W. 1 S.I Md. Nazrul Islam of Gouranadi Thana, having received secret information along with three other police personnel by

two motorcycles, started towards the house of Lal Mia of South Kataksthol village under Khajapur Union. At 4.45 pm, when they reached the place of occurrence at village South Kataksthol in front of the house of Lal Mia on the road, sensing the presence of the informant party, the accused persons 1. Rajib Talukdar and 2. Md. Rasel Akon attempted to flee, but police personnel detained them on the Kacha road situated along with the house of Lal Mia, in the presence of witnesses Abdus Salam Majhi, Mohiuddin Gorami, and Md. Jalal Sordar and searched the body of the accused persons and recovered 2(two) pieces of Yaba from the front left pocket of the pants of accused Rajib Talukdar, kept in polythene, and 3(three) pieces of Yaba from the left front pocket of pant of accused Md. Rasel Akon, total 50 grams valued at Tk. 1500. The accused persons were detained at 4.45 pm on 21.06.2016, and a seizure list was prepared at 5.00 pm on that day. The informant, S.I. Md. Nazrul Islam sent two pieces of Yaba for the report of the chemical examiner.

During the trial, charge was framed against the accused persons under table 9(Ka) of section 19(1) of the **মাদকদ্রব্য নিয়ন্ত্রণ আইন, ১৯৯০**. The prosecution examined 6(six) witnesses to prove the charge against the accused-persons. After concluding the trial, the trial Court by impugned judgment and order dated 26.04.2018 convicted the petitioner under table 9(Ka) of section 19(1) of the **মাদকদ্রব্য নিয়ন্ত্রণ আইন, ১৯৯০** and sentenced him to suffer rigorous imprisonment for 6(six) months and fine of Tk. 2,000, in default, to suffer rigorous imprisonment for 1(one) month more, against which the convict-petitioner filed Criminal Appeal No. 49 of 2019 before the Sessions Judge, Barishal, and the appellate Court, after hearing the appeal, by impugned judgment and order dated 18.03.2019 affirmed the judgment and order passed by the trial Court against which the convict-petitioner obtained the Rule.

Learned Advocate Mr. Md. Saiful Malek Chowdhury, appearing on behalf of the convict-petitioner submits that P.W. 1

stated that 2 pieces of Yaba was recovered from the possession of the co-accused Rajib Talukdar and 3 pieces of Yaba was recovered from the left side pocket of pant of the accused Md. Rasel Akon and 2 pieces of Yaba was sent to the chemical examiner, but nothing has been stated by the prosecution witnesses that the Yaba allegedly recovered from possession of the accused was sent to the chemical examiner and the prosecution failed to prove that Yaba was found from possession of the accused and both the Courts below without legal evidence passed the impugned judgment and order against the convict-petitioner. He prayed for setting aside the impugned judgment and order passed by the Courts below.

Learned Deputy Attorney General Mr. Md. Anichur Rahman Khan, appearing along with learned Assistant Attorney General Mr. Mir Moniruzzaman on behalf of the state, submits that in the presence of P.Ws 4 and 5, P.Ws 1, 2, 3 searched the body of the convict-petitioner and recovered 3 pieces of Yaba tablets from the left front pocket of the accused Md. Rasel Akon, which is also corroborated by the P.Ws 2 and 5 and the report of the chemical examiner (exhibit 3). The prosecution proved the charge against the convict-petitioner beyond all reasonable doubt, and the defence, by cross-examining the prosecution witnesses, failed to bring any contradiction in their evidence regarding the recovery of 3 pieces of Yaba from possession of the accused. Both the Courts below, on correct assessment and evaluation of the evidence, legally passed the impugned judgment and order. He prayed for discharging the Rule.

I have considered the submission of the learned Advocate Mr. Md. Saiful Malek Chowdhury, who appeared on behalf of the convict-petitioner, and the learned Deputy Attorney General Mr. Md. Anichur Rahman Khan, who appeared along with learned Assistant Attorney General Mr. Mir Moniruzzaman on behalf of the State, perused the evidence, impugned judgments and orders passed by the Courts below, and the records.

On perusal of the evidence, it reveals that P.W. 1 S.I Md. Nazrul Islam along with P.Ws 1, 2, and 3 in the presence of P.Ws 4 and 5, searched the body of the convict-petitioner Md. Rasel Akon and recovered 3 pieces of Yaba from his left front pocket of the pant and 2 pieces of Yaba from the left front pocket of pant of the accused Rajib Talukdar. The alleged recovery of 3 pieces of Yaba from the front left pocket of pant of the accused Md. Rasel Akon and 2 pieces of Yaba from the left front pocket of pant of the accused Rajib Talukdar are corroborated by P.Ws 2 to 5. P.W. 1 stated that 2 pieces of Yaba were sent to the chemical examiner, and P.W. 6 proved the report of the chemical examiner as exhibit 3.

P.W. 1 stated that he sent 2 pieces of Yaba to the chemical examiner. Nothing has been stated by P.W. 1 or any other witness that the Yaba allegedly recovered from the pocket of the accused Md. Rasel Akon was sent to the chemical examiner. Therefore, it cannot be said that the amphetamine was recovered from the possession of the accused Md. Rasel Akon. In the absence of any specific statement by the informant that the alleged Yaba recovered from the possession of the accused Md. Rasel Akon was sent to the chemical examiner; it cannot be said that narcotics was recovered from the possession of the accused.

In view of the above evidence, findings, observation, and the proposition, I am of the view that the prosecution failed to prove the charge against the convict-petitioner Md. Rasel Akon by adducing legal evidence beyond all reasonable doubt.

I find merit in the Rule.

In the result, the Rule is made absolute.

The impugned judgments and orders of conviction and sentence passed by the Courts below against the convict-petitioner Md. Rasel Akon is hereby set aside.

The accused Md. Rasel Akon is acquitted from the charge.

However, there will be no order as to costs.

Send down the lower Court's records at once.