

Present:

Mr. Justice Md. Shohrwardi

Criminal Revision No. 3757 of 2023

Md. Noyon

...Convict-petitioner

-Versus-

The State

...Opposite party

Mr. Md. Abdus Salam, Advocate

...For the convict-petitioner

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

Mr. Sultan Mahmood Banna, A.A.G with

Mr. Mir Moniruzzaman, A.A.G

...For the State

Heard on 12.08.2025

Judgment delivered on 18.08.2025

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 10.07.2023 passed by Additional Sessions Judge, Court No. 1, Jhenaidah in Criminal Appeal No. 79 of 2019 affirming the judgment and order of conviction and sentence dated 09.12.2018 passed by Chief Judicial Magistrate, Jhenaidah in Kaligonj Police Station Case No. 07 dated 07.12.2016 corresponding G.R No. 167 of 2016 convicting the petitioner under Serial No. 9(Ka) of table appended to section 19(1) of the মাদকদ্রব্য নিয়ন্ত্রণ আইন, ১৯৯০ and sentencing him thereunder to suffer rigorous imprisonment for 1(one) year and fine of Tk. 2,000(two thousand), in default, to suffer imprisonment for 2(two) months should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

The prosecution's case, in short, is that the informant Md. Mohsin Torfdar, S.I. of Subornosara Police Camp, Kaligonj Thana, Jhenaidah, along with Constable No. 222 Md. Chand Ali, Constable No. 753 Md. Shoriful Islam, Constable No. 974 Md. Akter Hossain, all of said Police Camp, based on the General Diary No. 124 dated

07.12.2016 at 11.20 am obtained a secret information that a few persons were selling narcotics in the house of one Ukil Mondal of village Bonkhirda. The informant, along with his force, conducted a special operation at 11.35 am and went to the house of said Ukil Mondal. Sensing their presence, they tried to flee, and at that time, the accused Md. Noyon was detained by the members of the police force, and 2/3 unknown persons fled away. At that time, in the presence of witnesses Md. Asadul Islam and Abdul Goffar Mondal searched the body of the accused and recovered 10(ten) pieces of Yaba kept in the right pocket of his pant made of jeans. At 11.45 am, the informant seized the recovered Yaba and prepared the seizure list.

P.W. 8 S.I. Md. Mahfuz Hossain took up the investigation of the case. During investigation, he visited the place of occurrence, prepared the sketch map and index, recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898, and sent the alamat for the report of the chemical examiner. During the investigation, he found the prima facie truth of the allegation made against the accused and submitted charge sheet against him under table 9(Ka) of section 19(1) of the মাদকদ্রব্য নিয়ন্ত্রণ আইন, ১৯৯০.

During the trial, charge was framed against the accused under table 9(Ka) of section 19(1) of the মাদকদ্রব্য নিয়ন্ত্রণ আইন, ১৯৯০, and at the time of framing charge, the accused was absconding, for which the charge framed against him could not be read over and explained to him. During the trial, the prosecution examined 8(eight) witnesses to prove the charge against the accused, and the defence cross-examined P.Ws 1, 4, and 5. After that, the accused again absconded, for which he was not examined under section 342 of the Code of Criminal Procedure, 1898.

After concluding the trial, the trial Court by judgment and order dated 09.12.2018 convicted the accused under table 9(Ka) appended to section 19(1) of the মাদকদ্রব্য নিয়ন্ত্রণ আইন, ১৯৯০ and sentenced him thereunder to suffer rigorous imprisonment for 1(one)

year and fine of Tk. 2,000(two thousand), in default, to suffer imprisonment for 2(two) months against which the accused filed Criminal Appeal No. 79 of 2019 before the Sessions Judge, Jhenaidah and the appeal was heard by Additional Sessions Judge, Court No. 1, Jhenaidah who by impugned judgment and order affirmed the judgment and order passed by the trial Court against which the convict-petitioner obtained the instant Rule.

P.W. 1 Constable Chand Ali stated that on 07.12.2016 at the time of conducting an anti-drug operation under the leadership of Camp-in-Charge, they came to know that a few persons were selling narcotics in the house of one Ukil Mondal of village Bonkhirda. They went to the place of occurrence at 11.45 am. Sensing their presence, the accused persons were trying to flee. At that time, the police personnel arrested the accused Noyon and searched his body, recovered 10 pieces of Yaba kept in the pocket of his pant made of jeans, and prepared a seizure list, and the witnesses signed the seizure list. During cross-examination, he stated that he, along with three others, went to the place of occurrence at 11.10 am under the leadership of the commander. The police personnel encircled the house. He stated that Mohsin Sir detained the accused and searched his body. He denied the suggestion that the accused was not detained from the place of occurrence or that no Yaba was recovered from the possession of the accused. He denied the suggestion that the accused was arrested from his house.

P.W. 2 Constable No. 753 Shariful and P.W. 3 Constable Anowar Hossain were tendered by the prosecution and declined by the defence.

P.W. 4 S.I. Mohsin Torfdar is the informant. He stated that the occurrence took place on 07.12.2016. On that day, he, along with the Constable Md. Chand Ali, Md. Shariful Islam, Md. Akter Hossain, based on the GD No. 124 dated 07.12.2016, started for the ante-drag operation. At 11.20 am, they came to know that the narcotics were

being sold in the house of one Ukil Mondal of village Bonkhirda, and at 11.35 am, they went to the place of occurrence and detained the accused Noyon Mondal, and unknown 2/3 persons fled away. In the presence of witnesses, he searched the body of the accused Noyon Mondal and recovered 10 pieces of Yaba kept in the right pocket of the pant made of jeans. In the presence of witnesses Asadul and Goffar Mondal, the seizure list was prepared. He took the signatures of the witnesses on the seizure list. He proved the FIR as exhibit 1 and his signature on the FIR as exhibit 1/1. He proved the seizure list as exhibit 2 and his signature on the seizure list as exhibit 2/1. He proved the seized alamat as material exhibit I. During cross-examination, he stated that while they were present at Mongalpaita Bazaar, they received the information, and Mongalpaita Bazaar was situated about 6 kilometers away from the place of occurrence. They went to the place of occurrence by two motorcycles. The owner of the house resides in Dhaka. They went directly to the house and arrested the accused. The accused was detained in the kitchen, and 2/3 other persons fled away. They stayed at the place of occurrence for about 15/20 minutes. He denied the suggestion that a quarrel took place between the source of the police and the accused, for which he was falsely implicated in the case, or that the accused was arrested from elsewhere, and he was falsely implicated in the case.

P.W. 5 Md. Ashadul Islam is a witness to the seizure list. He stated that the police arrested the accused, and produced the tablets. He proved his signature on the seizure list as exhibit 2/2. During cross-examination, he stated that he is not aware from whom the tablets was recovered.

P.W. 6 Abdul Gaffar Mondal is the witness of the seizure list. He stated that he was working in the field. Suddenly, he saw many people at the place of occurrence. Police produced the Yaba and said that the Yaba was recovered. He signed the seizure list. He proved his signature on the seizure list as exhibit 2/3. During cross-examination,

he stated that he is not aware of the fact that the Yaba was recovered from the possession of the accused.

P.W. 7 Md. Sohel Rana stated that the accused Noyon is known to him. His nickname is Baker. The occurrence took place at 11.45 am. He heard subsequently. The accused was absconding.

P.W. 8 S.I Md. Mahfuz Hossain is the Investigating Officer. He stated that on 07.12.2016, when he was discharging his duty as S.I of Kaligonj Thana, he was appointed as Investigating Officer of the case. He visited the place of occurrence, prepared the sketch map and index, recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898, and sent the alamat for the report of the chemical examiner. During investigation, he found the prima facie truth of the allegation made against the accused and submitted charge sheet against him under table 9(Ka) of section 19(1) of the মাদকদ্রব্য নিয়ন্ত্রণ আইন, ১৯৯০. He proved the sketch map as exhibit 3 and his signature thereon as exhibit 3/1. He proved the index as exhibit 4 and his signature on the index as exhibit 4/1. He proved the report of the chemical examiner as exhibit 5.

Learned Advocate Mr. Md. Abdus Salam, appearing on behalf of the convict-petitioner, submits that in the seizure list and the FIR, it has been alleged that 10 pieces of Yaba kept in a polypack in the right pocket of the pant of the accused made of jeans recovered in the presence of witnesses Md. Ashadul Islam and Abdul Gaffar Mondal, and during the trial, the polypack was not proved in the case. Having drawn the attention to the evidence of P.W. 4, learned Advocate submits that four police personnel directly went to the place of occurrence by two motorcycles, and 2/3 other persons fled away, and many locals assembled at the place of occurrence, but none of the locals corroborated the evidence of P.Ws 1 and 4. There was no reason for tendering P.Ws 2 and 3. Therefore, an adverse presumption should be drawn against the prosecution for non-examination of the

locals who were admittedly present at the time of recovery of the alleged Yaba.

Learned Deputy Attorney General Mr. Md. Anichur Rahman Khan, appearing along with learned Assistant Attorney General Mr. Sultan Mahmood Banna on behalf of the state, submits that P.Ws 1 to 3 recovered 10 pieces of Yaba kept in polypack in the right pocket of the pant of the accused made of jeans, and the P.Ws 5 and 6 were known to the accused-persons. Therefore, they did not corroborate the prosecution case. By cross-examining P.Ws 1 and 4, the defence failed to bring any contradiction in their evidence regarding the alleged recovery of the Yaba from the possession of the accused. He further submits that both the Courts below arrived at a concurrent finding of fact that Yaba was recovered from the possession of the accused. In the report of the chemical examiner, it has been asserted that Methyl Amphetamine is found in the alamat and the prosecution proved the charge against the accused beyond all reasonable doubt. He prayed for discharging the Rule.

I have considered the submission of the learned Advocate Mr. Md. Abdus Salam 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. Sultan Mahmood Banna on behalf of the State, perused the evidence, impugned judgments and orders passed by the Courts below, and the records.

In the seizure list and the FIR, it has been alleged that 10(ten) pieces of Yaba kept in a polypack in the right pocket of the pant of the accused made of jeans was recovered on 07.12.2016 at 11.45 am from the house of one Ukil Mondal of village Bonkhirda under Kaligonj Thana, Jhenaidah. During the trial, the prosecution proved the Yaba as material exhibit I and the report of the chemical examiner as exhibit 5. In the report of the chemical examiner (exhibit 5), it has

been stated that “১টি খাকী খামে প্রাপ্ত ১টি ০.০৯৮ গ্রাম লালচে ট্যাবলেটে ‘মিথাইল অ্যাস্টিটামিন’ পাওয়া গিয়েছে। সীলমোহর অক্ষত ছিল।”

P.W. 1 stated that they detained the accused. During cross-examination, he affirmed that P.W. 4 S.I Mohsin Torfdar detained the accused and 10(ten) pieces of Yaba kept in the right pocket of his pant made of jeans was recovered. P.W. 4 informant S.I. Mohsin Torfdar stated that 10(ten) pieces of Yaba kept in the plastic bag in the right pocket of the pant of the accused made of jeans was recovered. There is a contradiction in the evidence of the P.Ws 1 and 4 regarding the polypack wherein the alleged 10(ten) pieces of Yaba was kept. P.Ws 2 and 3, who were the members of the patrol party, were tendered, and the seizure list witnesses, who were admittedly present at the time of the alleged recovery of the 10(ten) pieces of Yaba from the pocket of the accused, did not corroborate the recovery of the alleged Yaba from the possession of the accused.

In the FIR, it has been alleged that the accused, along with 2/3 other persons, were selling the Yaba in the house of one Ukil Mondal of village Bonkhirda, and the accused was detained from the kitchen of the said house. It is found that none of the resident of the house of Ukil Mondal and other locals who were admittedly present at the time of the occurrence is examined in the case. The alleged polypack wherein 10(ten) pieces of Yaba was kept, is not proved in the case. Therefore, the prosecution's case that the 10(ten) pieces of Yaba was recovered from polypack kept in the right pocket of the pant of the accused made of jeans is doubtful.

No explanation has been given by the prosecution as to why none of the residents of the house of Ukil Mondal was not examined in the case. P.W. 4 admitted in cross-examination that he, along with three other constables, went to the place of occurrence directly by two motorcycles and detained the accused. Therefore, there was no scope to witness the occurrence by any other locals, and the statement made by P.W. 4 in the FIR that the 10(ten) pieces of Yaba was recovered in

the presence of the seizure list witness is a doubtful story. In view of the above evidence, facts, and circumstances of the case, an adverse presumption is drawn due to the non-examination of the resident of the house of Ukil Mondal and other locals who were admittedly present at the time of the alleged recovery of 10(ten) pieces of Yaba. P.Ws 4 and 5, did not corroborate the prosecution's case, and other locals were not examined in the case.

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 accused beyond all reasonable doubt.

I find merit in the Rule.

In the result, the Rule is made absolute.

The impugned judgments and orders passed by the Courts below against the convict-petitioner Md. Noyon are hereby set aside.

However, there will be no order as to costs.

Send down the lower Court's records at once.