IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

(CRIMINAL REVISIONAL JURISDICTION)

Present:

Mr. Justice Md. Bashir Ullah

Criminal Revision No. 4037 of 2023
In the matter of:

An application under section 439 read with 435 of the Code of Criminal Procedure

-And-

In the matter of:

Md. Mahabul Biswas

...Convict-Appellant-Petitioner

-Versus-

The State

.....Respondent-Opposite Party

Mr. Md. Mahabubur Rahman, Advocate

.....For the petitioner.

Mr. S. M. Aminul Islam Sanu, DAG with

Mr. Md. Nasimul Hasan, AAG with

Mr. Md. Golamun Nabi, AAG and

Ms. Farhana Abedin, AAG

..... For the State

Heard on: 23.02.2026, 24.02.2026, 26.02.2026 and 01.03.2026
Judgment on: 03.03.2026

This Rule was issued at the instance of the petitioner calling upon the opposite party to show cause as to why the judgment and

order dated 25.07.2023 passed by the learned Sessions Judge, Kushtia in Criminal Appeal No. 67 of 2023 affirming the judgment and order of conviction and sentence dated 04.08.2015 passed by the learned Senior Judicial Magistrate, Kushtia in G.R. No. 110 of 2010 (Daulatpur) arising out of Daulatpur Police Station Case No. 06 dated 04.03.2010 convicting the petitioner under Table 7(ka) of Section 19(1) and 19(4) of the Madok Drabbya Niyantron Ain, 1990 and sentencing him to suffer rigorous imprisonment for a period of 01(one) year with a fine of Taka 1,000/- should not be set aside and/or such other or further order or orders be passed as to this court may seem fit and proper.

Facts relevant for disposal of the Rule, in brief, are that, the informant, Sub-Inspector Debashish Das of RAB-12, Kushtia lodged a First Information Report with Daulatpur Police Station, Kushtia against the accused-petitioner alleging *inter alia* that on 04.03.2010 at about 5.45 hours while the informant along with his force was on duty within the jurisdiction of Daulatpur Police Station, one Md. Mahabul Biswas was seen approaching on a bicycle. Upon being signalled to stop, allegedly he attempted to flee away but was apprehended and 01 kg and 900 grams of Ganja (marijuana/cannabis) were recovered from his possession. There

after having prepared a seizure list at the spot in the presence of witnesses the informant came to the Police Station. Thereafter, the informant lodged the FIR with Daulatpur Police Station which was registered as Daulatpur Police Station Case No. 06, dated 04.03.2010 under Table 7(ka) of Sections 19(1) and 19(4) of the Madok Drabbya Niyantron Ain, 1990.

On closure of investigation, the Investigating Officer submitted police report being No. 121, dated 11.04.2010 recommending prosecution under Table 7(ka) of Sections 19(1) and 19(4) of the Madok Drabbya Niyantron Ain, 1990. Thereafter, upon taking cognizance of offence, charge was framed against the accused under Table 7(ka) of Sections 19(1) and 19(4) of the Madok Drabbya Niyantron Ain, 1990. At the time of framing of charge the accused was absconding. In course of trial, the prosecution examined 6 witnesses while the defence examined none. The accused was not examined under Section 342 of the Code of Criminal Procedure as he was absconding at that time.

Upon conclusion of the trial, the learned Senior Judicial Magistrate, Kushtia by judgment and order dated 04.08.2015 convicted the accused-petitioner under Table 7(ka) of Sections 19(1) and 19(4) of the Madok Drabbya Niyantron Ain, 1990 and

sentenced to suffer rigorous imprisonment for 01(one) year with a fine of Taka 1,000/-, in default 01(one) month more rigorous imprisonment.

Challenging the conviction and sentence, the petitioner filed Criminal Appeal No. 67 of 2023 before the learned Sessions Judge, Kushtia, who dismissed the appeal affirming the conviction and sentence by the judgment and order dated 25.07.2023.

Being aggrieved by and dissatisfied with judgment and order dated 25.07.2023, the petitioner preferred the instant Criminal Revision before this Court and obtained Rule and bail.

Mr. Mahabur Rahman, the learned Advocate appearing on behalf the petitioner submits that the prosecution witnesses failed to support the alleged recovery of Ganza in a consistent and reliable manner and there are contradictions in depositions regarding time, place and manner of recovery.

He next submits that no disinterested, independent and impartial witnesses even the Investigation Officer was not examined and as such the judgments and orders are liable to be set aside.

He contends that the seizure list witnesses admitted that they signed on blank papers and did not see the recovered articles and even the seized substance was not properly weighed in accordance with law. He argues that the chemical examination report was neither proved nor exhibited during trial and thus the prosecution failed to prove the charge beyond reasonable doubt.

. He lastly submits that the petitioner is a day labourer, the sole earning member of his family and he has no previous criminal record. He finally prays for making the Rule absolute.

In support of his contention he refers to the case of ***Zafela Begum and others Vs Atikullah and others***, reported in 16 BLC (AD) 46 and ***Kazi Mahabubuddin Ahmed Vs. The State,*** reported in 57DLR 513.

Per contra, Mr. Md. Nasimul Hasan, the learned Assistant Attorney General contends that there is no illegality, impropriety or infirmity in the impugned judgments and orders. The trial Court rightly convicted and sentenced the petitioner and the lower appellate Court rightly affirmed the conviction and sentence passed by the trial Court.

He further submits that admittedly, no scale was used to determine the actual quantum of the seized marijuana and the chemical report was not examined however it is fact that narcotics were recovered from the accused and the recovery was proved by six prosecution witnesses. So, the accused is not entitled to have any relief from the Court. In support of his contention the learned Assistant Attorney General refers to the case of ***Leon and another Vs. State***, reported in 69 DLR(2017) 498 and ***Eliadha McCord Vs. The State,*** reported in 48 DLR(1996) 495. He prays for discharging the Rule.

I have considered the submissions advanced by the learned Advocates for the respective parties and perused the impugned judgments and orders, annexure and other materials on records.

It appears from the evidence of PW-5 Md. Milan Hossain, seizure list witness in his examination-in-chief stated that আমি একটি ব্যাগ দেখি। তারা আমাকে একটি কাগজ স্বাক্ষর দিতে বললে স্বাক্ষর করি।

Another seizure list witness, PW-6, Md. Jaynal also stated in his examination-in-chief that আমি বাড়ি আসার পথে র‍্যাবের লোকজন দেখি। তারা আমাকে একটি কাগজে স্বাক্ষর করতে বললে স্বাক্ষর করি। একটি ব্যাগ দেখেছিলাম। র‍্যাব বলেছে তাতে গাঁজা আছে।

The above-mentioned evidence indicates that the seizure list witnesses signed on a blank paper as asked by RAB personnel which was subsequently exhibited as seizure list and they did not see the incriminating articles with their own eyes. The RAB authority informed them that they recovered Ganja (marijuana/canabis). Such evidence renders the seizure list highly doubtful and undermines its evidentiary value.

It transpires from the evidence adduced by the prosecution witness that the time of occurrence was also not proved. The witnesses deposed contradictory statements regarding arrest of the accused and recovery of the Ganja (marijuana/canabis). PW-3, Nurul Azam, a member of the raiding party stated in his examination-in-chief that আনুমানিক সকাল ৫.৫৫ মিনিটের সময় সাইকেল আরোহী এক ব্যক্তিকে আমরা থামতে বলি। সে না থেমে সাইকেল দ্রুত চালাতে থাকে। এক পর্যায়ে আমাদের সঙ্গীয় ফোর্স তাকে গ্রেফতার করে। Whereas in the FIR it is stated that অদ্য ইং ০৪.০৩.২০১০ তারিখ অনুমান ৬.৫৫ ঘটিকার দিকে ধৃত আসামী মোঃ মাহাবুবুল বিশ্বাস একটি সাইকেলের হ্যান্ডেলে প্লাষ্টিকের ব্যাগে কিছু মালামাল সহ সাইকেল চালাইয়া তল্লাশী স্থানে আসে। PW-4, Bashudeb Das, in his examination-in-chief stated that পিসিসি নং ৮২, তাং ০৩.০৪.২০১০ মূলে সকাল অনুমান ৬.৩০ টার সময় টহলে বের হই। On the otherhand in FIR it is stated that পিসিসি নং ৮২/১০ তারিখ ০৪.০৩.২০১০ সময় ৫.৪৫ ঘটিকা মূলে সঙ্গীয়

অফিসার ও ফোর্সসহ দৌলতপুর থানা এলাকা টহল ও চেকপোষ্ট ডিউটি করার জন্য রওনা হই।

There are material contradictions in the statements adduced by the witnesses regarding the place of occurrence. PW-2 stated that সাইকেলের হ্যান্ডেলের সাথে প্লাষ্টিকের ব্যাগের ভিতর আনুমানিক ১ কেজি ৯০০ গ্রাম গাঁজা পাওয়া যায়। On the other hand PW-3 stated ঐ ব্যক্তির সাইকেলের পিছনের ক্যারিয়ারে প্লাষ্টিকের কাগজে মোড়ানে অবস্থায় ১ কেজি ৯০০ গ্রাম গাঁজা ছিল। PW-4 stated that তার সাইকেলে থাকা প্লাষ্টিকের ব্যাগ তল্লাশী করে ঐ ব্যাগের ভিতর গাঁজা পাওয়া যায়।

The trial Court also observed in its judgment and order that there are contradictions in the evidence adduced by the witnesses but it treated as minor discrepancy. The trial Court observed that উপস্থাপিত সাক্ষীদের সাক্ষ্যের মধ্যে কিছু ছোট খাটো Discrepancies লক্ষ্য করা গেলেও তা আদালতের কাছে minor discrepancy বলে মনে হয়েছে।

The FIR alleges recovery of 1 kg 900 grams of Ganja (marijuana), however the prosecution failed to prove the weighing or scaling procedure in the FIR and also during the trial. In the case of narcotics, the weight of seized substance is crucial as punishment varies depending on quantum under section 19 of the

Madok Drabbya Niyantron Ain (The Narcotics Control Act, 1990). The table of punishment tiers runs as follows:

ক্রমিক নং	মাদকদ্রব্যের নাম	ইন্ড
৭.	গাঁজা বা যে কোন ভেষজ ক্যানাবিস	(ক) মাদকদ্রব্যের পরিমান অনূর্ধ্ব ৫ কেজি হইলে অন্যূন ৬ মাস এবং অনূর্ধ্ব ৩ বৎসর কারাদন্ড। (খ) মাদকদ্রব্যের পরিমান ৫ কেজির উর্ধ্বে হইলে অন্যূন ৩ বৎসর এবং অনূর্ধ্ব ১৫ বৎসর কারাদন্ড।
৮.	যে কোন প্রজাতির ক্যানাবিস গাছ	ক্যানাবিস গাছের সংখ্যা অনূর্ধ্ব ২৫টি হইলে অন্যূন ৬ মাস এবং অনূর্ধ্ব ৩ বৎসর কারাদন্ড। (খ) ক্যানাবিস গাছের সংখ্যা ২৫টির বেশি হইলে অন্যূন ৩ বৎসর এবং অনূর্ধ্ব ১৫ বৎসর কারাদন্ড।

It appears that the witnesses do not testify that they saw the marijuana being weighed on a scale and the RAB authority took the accused to a nearby shop to weigh the item and as such the entire recovery became doubtful. Seizure list must be prepared at the spot of recovery in the presence of local witness mentioning how the materials were measured. The police failed to record how they weighed it at the scene or during booking; it raises a red flag about the integrity of the evidence. Thus seizure list became defective. Material contradiction regarding the recovery including how it was weighed makes the recovery doubtful. The prosecution failed to follow mandatory procedural steps, the benefit of doubt must go in favour of the accused.

The witnesses did not see weighing the incriminating articles which makes the seizure list unreliable and the case collapsed. If the raiding party cannot explain the source of the weighing scale or the presence of a weighing memo, it creates a gap in the chain of evidence.

Upon meticulous scrutiny of the evidence on record, it appears from the impugned judgment that recovered ganza was forwarded to the Chemical Examiner for forensic analysis and chemical examination report was obtained to establish that the seized substance was marijuana, a prohibited narcotic substance within the meaning of the মাদকদ্রব্য নিয়ন্ত্রণ আইন, ১৯৯০। But the report was neither tendered in evidence nor marked as an exhibit during trial.

In a criminal case the prosecution must proved beyond reasonable doubt that the seized substance is actually marijuana (canabis).

The Courts below relied upon Section 510 of the Code of Criminal Procedure stating that the report of a Government Chemical Examiner can be used as evidence without calling the

chemical examiner as witness. It is true but it must be formally produced by any other prosecution witness and marked an exhibit.

The failure to exhibit the report creates a massive gap in the chain of custody. Non-production or non-exhibition of the chemical examiner's report is a fundamental defect. If the chemical examination report is not exhibited the charges of possession of narcotics will fail and the accused is certainly entitled to an acquittal.

It is to be reiterated that to connect the forensic report with the substance allegedly recovered and seized from possession of the accused prosecution is required to prove the chemical examination report by examining the concerned chemical examiner or any other witness.

In a case involving an offence of trafficking or carrying illegal narcotics chemical examination report is indeed crucial for proving the nature of the substance recovered and allegedly seized. But in the case in hand, it depicts that though the report of chemical examination forms part of the record, the concerned report issuing chemical examiner or any other witness has not been examined and thus the chemical examination report has not

been proved and exhibited before the trial Court. Such deficiency on part of prosecution indubitably creates doubt benefit of which goes in favour of accused.

In such circumstances, this Court finds that the chemical examination report constitutes a substantive and reliable piece of evidence establishing that the seized substance was marijuana. However, where the chemical examination report has not been exhibited in accordance with law, or where the prosecution has failed to prove the same through a competent witness, such omission goes to the root of the case. In absence of scientific proof as to the nature of the seized material, it would be wholly unsafe to sustain a conviction merely on the basis of oral testimony.

On careful scrutiny of the impugned judgments, I find that the Courts below failed to properly consider the aforesaid material discrepancies and proceeded to convict the accused-petitioner on conjectures and surmise rather than on evidence. The findings of the Courts below thus suffer from misreading and non-consideration of material evidence on record.

In the totality of the facts and circumstances, I am of the considered view that the prosecution has miserably failed to prove

the charge against the accused-petitioner under Table 7(ka) of Sections 19(1) and 19(4) of the Madok Drabbya Niyantron Ain, 1990 beyond all reasonable doubt. The accused-petitioner is, therefore entitled to the benefit of doubt. Both the Courts below committed error of law in convicting the petitioner for the offence charged with.

In the result, the Rule is made absolute.

The judgments and orders of conviction and sentence passed by the Courts below are hereby set aside.

The accused-petitioner is acquitted of the charge under Table 7(ka) of Section 19(1) and 19(4) of the Madok Drabbya Niyantron Ain, 1990.

Since the accused-petitioner is enlarged on bail he is discharged from his bail bond immediately.

Let a copy of this judgment along with lower Court's record be communicated to the concerned Court forthwith.

(*Md. Bashir Ullah, J.*)