

GAHC010097472023



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**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : CrI.A./171/2023**

BIPIN KUMAR AND ANR.  
S/O DHARMENDRA KUMAR  
RESIDENT OF VILLAGE AND PS BAKTIARPUR, DIST PATNA BIHAR

2: VIRA MAHATO  
S/O LATE BASANTA MAHATO

VILLAGE GULAMAHIYA CHOK  
PS MOJIPUR NADDI  
DIST PATNA  
BIHAR

VERSUS

THE STATE OF ASSAM  
REPRESENTED BY PP ASSAM

**Advocate for the Petitioner** : M PATHAK, S DAS,MR. P K DAS

**Advocate for the Respondent** : PP, ASSAM,

Linked Case : CrI.A./219/2023

SURAJ KUMAR ROY  
S/O KISANDEV ROY  
R/O KUMARDUBI  
KALYARI  
P.S.- CHIRKUNDI

DIST.- DHANBAD  
JHARKHAND  
PIN- 828202.

VERSUS

THE STATE OF ASSAM AND ANR.  
REP. BY THE PUBLIC PROSECUTOR  
ASSAM

2:SANJIB CHOUDHURY  
S/O LATE SUNIL CHOUDHURY  
VILL.- ABHAYAPURI  
WARD NO. 3  
P.S.- ABHAYAPURI  
DIST.- BONGAIGAON  
ASSAM.

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Advocate for : MR. S MITRA

Advocate for : PP

ASSAM appearing for THE STATE OF ASSAM AND ANR.

**Advocate for the appellant/s : Mr. M. Pathak, Adv.**

Criminal Appeal No. 171/2023

Mr. S. Mitra, Adv.

Criminal Appeal No. 219/2023

Advocate for the respondents : Mr. R.R. Kaushik, APP, Assam.

**:::BEFORE:::**

**HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

**HON'BLE MR. JUSTICE KAUSHIK GOSWAMI**

Date on which judgment is reserved : 23/04/2026

Date of pronouncement of judgment : 28/04/2026

Whether the pronouncement is of the operative part of the judgment ? : No

Whether the full judgment has been pronounced? : Yes

### **JUDGEMENT AND ORDER (CAV)**

***(Michael Zothankhuma, J)***

**1.** Heard Mr. S Mitra, learned counsel for the appellant in Criminal Appeal No. 219/2023 and Mr. M Pathak, learned counsel for the appellants in Criminal Appeal No. 171/2023. Also heard Mr. R R Kaushik, learned Additional Public Prosecutor, Assam for the State.

**2.** These two appeals have arisen out of the same impugned judgment and order dated 09.03.2023 passed by the learned Special Judge, Bongaigaon in Special (Nar) Case No. 23(BGN)/2022, convicting all the three appellants under Section 20 (b)(ii) (C) of the ND&PS Act. The appellants have thereafter been sentenced to undergo rigorous imprisonment for 15 (fifteen) years and to pay a fine of Rs. 1,00,000 (one lakh) each, in default of payment of fine, further simple imprisonment for 6 (six) months.

**3.** The prosecution's case in brief is that the appellants were apprehended by the police on 13.02.2022 at about 13:38 PM at New Bongaigaon Railway Station on their arrival on the Deogarh Express Train. A search of the blue trolley bag carried by Suraj Kumar Roy and the plastic sack held by the other 2 appellants, showed that they had carried a total of 21.1 Kgs of Ganja. The blue trolley bag of Suraj Kr. Roy contained 10.21 Kgs. of Ganja, while the plastic sack belonging to the other two appellants, i.e., Bipin Kumar and Vira Mahato contained 10.8 Kgs. of Ganja.

4. The counsels for the appellants submit that the prosecution had failed to establish that the appellants were in conscious possession of the seized contraband. They submit that the search and seizure of the contraband has not proved that the appellants were in possession of the *Ganja*, as per the evidence given by the prosecution witnesses. Further, the prosecution has failed to prove that the contraband was in the secured custody of the police, in terms of the requirements of Section 55 NDPS Act, i.e. there was nothing to show that the contraband was kept in the proper custody of the Police, between the time of the seizure and production of the same before the Magistrate in question.

5. The learned counsels for the appellants also submit that there has been non-compliance of Section 41 of the NDPS Act, inasmuch as, there is nothing to show as to whether the PW-4 could have searched for the contraband. Further, PW-6 stated in his evidence that he had not made a physical seizure of the contraband. They also submit that the prosecution has failed to prove the foundational facts so as to attract the rigours of section 35 of the NDPS Act, which raises the presumption of culpable mental state on the part of the accused.

6. The learned counsels for the appellants also submit that the appellant Suraj Kumar Roy had bought a ticket for Coach No. B-1, while the train tickets for the other two appellants were in relation to Coach No. S-2. The above thus showed that the appellants were not working together. Further, the explanation given by all the 3 (three) appellants under section 313 Cr.P.C., showed that the appellant Suraj Kumar Roy did not know the other two appellants and vice-versa.

7. The counsels for the appellants submit that while 6 (six) Police personnel had taken part in the search and arrest of the appellants, all the Police personnel were not made prosecution witnesses and as such, not examined. They submit that the

above was only to ensure that the illegal arrest and seizure by the Police would not come out in the open during trial, as the same deprived the appellants from cross-examining all the policemen, who were a part of the team who detained them. They submit that as mandatory provisions of law have not been followed while making the search, seizure and arrest of the appellants, the impugned judgement should be set aside and the appellants should be acquitted of the charge under section 20b(ii) (C) of the NDPS Act.

In support of their submissions, they have relied upon the following judgements of the Supreme Court in :-

- (i) ***Thounaojam Punima Singh Vs. Union of India & Anr.***, reported in **2021 (1) GLT 790**.
- (ii) ***Sri Biswanath Pratap & Anr. Vs. The State of Assam & Anr.*** (Crl. A. 51/2020).
- (iii) ***State of Gujarat Vs. Ismail U Haji Patel & Anr.*** reported in **(2003) 12 SCC 291**.
- (iv) ***Mohanlal Vs. State of Punjab.*** reported in **(2018) 17 SCC 627**.
- (v) ***Manirut Zaman @ Moni Vs. The State of Assam*** (Crl.A. 392/2023).
- (vi) ***Noor Aga Vs. State of Punjab*** reported in **(2008) 17 SCC 407**.
- (vii) ***Gurbachan Singh Vs. State of Punjab*** (Crl. Appeal S. No. 1033/2007).
- (viii) ***Moinul Hoque son of Jalil Uddin Vs. The State of Assam*** reported in **2023 0 Supreme (Gau) 566**.

8. The learned APP, on the other hand, submits that there is no infirmity with

the judgement of the learned Trial Court and as such, the same should not be interfered with.

**9.** In the case of ***Thounaojam Punima Singh (supra)***, this Court held that the presence of independent witness at the time of search and seizure of contraband is not an indispensable requirement, nor does the absence of independent witnesses vitiate the trial. The search and seizing officer should make an endeavour to call upon independent and respectable witnesses to witness the search and seizure. If the officer does not make such an endeavour, the probative value or the credibility of the search and seizure shall be effected, if statutory provisions are not complied with.

**10.** In the case of ***Sri Biswanath Pratap (supra)***, this Court held that before a presumption under Section 35 NDPS could be raised, the prosecution was obliged to establish that the accused was in exclusive and conscious possession of the contraband in order to sustain conviction for illegal possession of contraband.

**11.** In the case of ***Ismail U Haji Patel (supra)***, the Supreme Court held that what is to be established by the prosecution is that the seized articles were kept in proper custody, in proper form and the sample sent to the Chemical Analyst was relatable to the seized articles.

**12.** In the case of ***Mohanlal (supra)***, the Supreme Court held that Section 55 of the NDPS Act made it a duty of the police officer to deposit the seized materials in the Police Station Malkhana.

**13.** In the case of ***Noor Aga (supra)***, the Supreme Court held that if the prosecution failed to prove the foundational facts, so as to attract the rigours of Section 35 of the Act, the actus reus which is possession of contraband by the accused, cannot be said to have been established.

**14.** In the case of ***Moinul Haque (supra)***, this Court held that though Section 54 of the NDPS Act places the burden on the prosecution to first prove the foundational facts regarding possession of contraband by the accused, which would then require the accused to prove that he was not in possession of the same.

**15.** In the case of ***Gurbachan Singh (supra)***, the Supreme Court held that the provisions of Section 55 of the NDPS Act are not mandatory, but are directory in nature. The above finding had been made in terms of the Supreme Court judgement in the case of ***Babubhai Odhavji Patel and Others v. State of Gujarat***, reported in ***(2005) 8 SCC 725***, wherein the Hon'ble Supreme Court observed in Paragraph-8 as follows:

*“8. The learned counsel further contended that the seized articles were not kept in proper custody and that there was violation of Sections 52, 55 and 57 of the NDPS Act. He placed reliance on Valsala v. State of Kerala 1993 Spp (3) SCC 665. We do not think that there is much force in this contention. This Court in Gurbax Singh v. State of Haryana (2001) 3 SCC 28 held that these provisions are not mandatory provisions and they are only directory.”*

**16.** We have heard the learned counsels for the parties.

**17.** As can be seen from the evidence on of PW6, who was the in-charge O.C. of Bongaigaon GRPS. He received an FIR on 13/01/2022 at 2.15 p.m. from the ASI of Police, which was to the effect that the ASI had received information at 10 a.m. on 13/02/2022 from a reliable source that some *Ganja* peddler was bringing a lot of *Ganja* in coach number B-01 of Deoghar Weekly Express Train, which was coming from Agartala railway station towards New Bongaigaon Railway Station. Accordingly, on the basis of written authorization issued to the ASI, by an authorized officer under section 41(2) NDPS Act, he carried out a search in coach No. B-01 of the said train. During the search, the three appellants, one of whom was carrying the blue coloured trolley bag and the other two with plastic sacks were noticed avoiding the

police team and trying to escape from the searched coach. However, they were intercepted and from one blue coloured trolley bag and one purple coloured plastic sack, *Ganja* was recovered. Thus, 2 seizure lists were made. Pursuant of the FIR dated 13/02/2022, Bongaigaon GRPS case number 07/2022, under section 20 (b)(ii) (C) NDPS Act was registered.

**18.** After investigation of the case, the I.O. had submitted a charge sheet, having found a *prima facie* case under section 20(b)(ii)(C) established against the appellants. The charge under section 20(b)(ii)(C) NDPS Act was framed against the appellants, to which they pleaded not guilty and claimed to be tried. The learned Trial Court then examined 7 prosecution witnesses. After examining the appellants under Section 313 Cr.P.C, the learned Trial Court convicted them for possession of commercial quantity of *Ganja*, which had been seized by way of 2 seizure memos/lists.

**19.** The evidence of PW-1 and PW-2 is that they were tea vendors in the New Bongaigaon Railway Station and that on 13/02/2022 at around 1 to 1.40 pm, the Deoghar Express train arrived at the New Bongaigaon platform. GRPF personnel boarded the train and conducted search operation, wherein they apprehended three persons with a trolley bag and a sack containing suspected *Ganja*. They were also made the seizure witnesses. In their cross-examination, PW-1 and PW-2 stated that they could not say from where the GRPF personnel recovered the trolley bag and the sack containing the *Ganja*. They also did not know the names of the GRPF personnel who had boarded the train or prepared the seizure list. Further, the stoppage time of Deoghar Express in the New Bongaigaon station was two minutes.

**20.** The evidence of PW-3, who is a tea stall owner at platform No. 1, New Bongaigaon station, is similar to the evidence of PW-1 and PW-2. He also stated that he was made a seizure witness to the seizure of the trolley bag and the plastic

sack containing suspected *Ganja*. PW-3 also stated that he did not know from where and from whom the GRPF personnel had recovered the suspected *Ganja*. He also stated that he had seen the GRPF personnel measuring the suspected *Ganja*.

**21.** The evidence of PW-4, who is the in-charge of the GRPF at New Bongaigaon Railway Station, is to the effect that they had received secret information at around 10 a.m. on 13/02/2022 that *Ganja* was being carried in Deoghar Weekly Express in coach number B-1. After receiving the information, the same was entered by GD vide entry number 171 dated 13/02/2022. The matter was informed to the O.C. of the Bongaigaon GRPS and IRP Fakiragram Camp. He was also authorized to conduct search, which was sent to him through messenger. On arrival of the Deoghar Weekly Express at New Bongaigaon station at 13.38 hours, PW-4 along with his staff boarded the train and conducted a search in coach B-1. During the search, he found two persons holding a purple coloured plastic sack, while one appellant, Suraj Kumar Roy, was holding a blue coloured trolley bag. They were all going towards another coach to avoid being searched. During the search, they found suspected *Ganja* in the purple coloured plastic sack and the blue coloured trolley bag. Accordingly, all the three persons were taken out from the train and the matter informed to PW-6, who was the O.C. Bongaigaon GRPS. Thereafter, the three appellants with the recovered articles were taken in front of GRPS office. PW-6 then arrived and measured the articles in presence of the witnesses. The same was also seized in the presence of witnesses. The total weight of the suspected *Ganja* in the purple colour sack was 10.8 kg while the weight of the suspected *Ganja* in the blue colour trolley bag was 10.21 kg.

**22.** In his cross-examination, PW-4 stated that he did not seize any train tickets from the appellants. He also stated that the appellants all belonged to different States and were not related. PW-4 further stated that one copy of the train ticket in the name of the appellant Suraj Kumar Roy was seen in coach number B-1, seat

number 19, upper berth. Another copy of a train ticket seemed to be in the name of the appellants Bipin Kumar and Vira Mahato, coach number S-2, seat number 8 and 6.

**23.** The evidence of PW-5, who is a retired Joint Director of the Forensic Science Laboratory (FSL), Assam, is to the effect that they had received a parcel consisting of two exhibits and on examining the exhibits, the same gave positive tests for *Ganja*.

**24.** The evidence of PW-6, who is the in-charge O.C. of Bongaigaon GRPS, is to the effect that on 13/02/2022 at 2-25 p.m. he received an FIR submitted by PW-4 and took up the case for investigation. The FIR was with regard to the *Ganja* being brought in the Deoghar Weekly Express train. On recording the statement of the complainant at Bongaigaon GRPS, he went to the New Bongaigaon GRPS Investigation Centre. The suspected *Ganja* was measured and found to be 21 kgs. He recorded the statement of the witnesses and visited the place of occurrence at the New Bongaigaon Railway Station Platform No.1. He prepared seizure lists and on questioning the appellants, he was told that they had purchased 21 kgs of *Ganja* worth Rs. 31,500/- from two unknown persons. He had also made an inventory of the seized articles and sent the samples for examination to the FSL.

**25.** The evidence of PW-7 is to the effect that he had submitted the charge sheet against the appellants on 31/03/2022 for the offence under Section 20(b)(ii)(C)/ 29 NDPS Act.

**26.** The examination of the appellants under section 313 Cr.P.C. shows that they had all denied having any involvement with the seized *Ganja*. However, it is interesting to note that the appellant Suraj Kumar Roy has denied knowing the appellants Bipin Kumar and Vira Mahato. Similarly, the appellant Bipin Kumar and

Vira Mahato have denied knowing Suraj Kumar Roy.

**27.** The evidence of the prosecution witnesses show that none of the seizure witnesses, i.e, PWs-1, 2 & 3, had seen the place from where the GRP personnel had recovered the trolley bag and the sack containing the *Ganja*. They were present at the time of seizure which was made by the PW-6 in the railway station platform. The evidence of PWs-1, 2 & 3 shows that the *Ganja* had been recovered from the trolley bag and the sack recovered from the appellants. Though the evidence of PW-3 in his cross-examination is to the effect that he did not know from where and from whom the suspected *Ganja* had been recovered, we are of the view that the evidence of PWs-1, 2 & 3 in their *examination-in-chief* proved that the *Ganja* had been recovered from the trolley bag, which was held by Suraj Kumar Roy and the purple coloured plastic sack of the other appellants.

**28.** The evidence of PW-4, who is the only one amongst the Prosecution Witnesses, who boarded the train and detained the appellants and their luggage, is to the effect that Suraj Kumar Roy was holding the blue coloured trolley bag and the other two appellants were holding the purple coloured plastic sack. *Ganja* recovered from the trolley bag was 10.21 kgs, while the *Ganja* recovered from the purple coloured plastic sack was 10.8 kgs. There is nothing to show in the evidence of the prosecution witnesses that the appellants were working together and that the *Ganja* recovered from the purple coloured plastic sack was also jointly owned by Suraj Kumar Roy. Similarly, there is nothing to show that the other two appellants namely Bipin Kumar and Vira Mahato had acted together with Suraj Kumar Roy in respect of the *Ganja* that had been recovered from the blue coloured trolley bag.

**29.** It is no doubt true that in terms of Section 100(4) Cr.P.C. and in respect of a search to be conducted in a closed space, the Officer or any other enforcement agency person who is about to make the search, shall call upon two or more independent and respectable inhabitants of the locality in which place the search is

to be conducted, or of any other locality, if no such inhabitant of the said locality is available or is willing to be a witness to the search. In the present case, when there is no bar for people to be on a train prior to its movement, we do not find a stationary train to be a closed space. Further, the train that had stopped in the New Bongaigaon Railway Station had a stoppage time of only two minutes. As such, we do not find any infirmity in the appellants and their luggage being brought down, for search and seizure, to be made on the railway station platform. We would also like to refer to the judgment of the Hon'ble Supreme Court in the case of ***Jothi @ Nagajothi Vs. The State, represented by the Inspector of Police, Criminal Appeal No.259/2025***, which was disposed of on 11/12/2025. The Hon'ble Supreme Court, in the above case, held that mere absence of independent witnesses does not lead to the conclusion that an accused has been falsely implicated. It is also held that mere non-compliance/delayed compliance or deviation/irregularity from following the ideal procedure under Section 52-A Cr.P.C., does not go to the root of the matter and it is not fatal, unless the irregularity creates discrepancies affecting the integrity of the seized substance or the identity of the sample analyzed. In this case, due to the short waiting time of the train in the platform, which was for around 2 minutes, we do not find any infirmity in the seizure witnesses being made a party to the search and seizure only in the railway station platform and not inside the train.

**30.** Though the appellants' counsels had tried to make out a case that the prosecution had not kept the seized articles in proper custody after seizure of the same, we do not agree to the said submission, in view of the evidence of PW-6, who stated that he had prepared two seizure lists and the inventory of the seized articles in his capacity as O.C. The application for certification of the correctness of the inventory, photographs and samples of the seized cannabis were also exhibited as Ext. P-8, P-9, P-10 and P-11.

**31.** We also do not attach much importance to the evidence of PW-6 in his cross-examination where he stated that he did not physically seize suspected *Ganja* from the accused persons, as the informant who is PW-4, had stated that the suspected *Ganja* was recovered from the possession of the appellants. PW-4 had caught hold of the appellants in the train and brought them down to the platform where search was conducted and the *Ganja* had been found. PW-6 was then informed of the same by PW-4. PW-6 had then came to the railway station and seized the *Ganja* in the platform of the railway station.

**32.** The next question is with regard to whether there was non-compliance of Section 41 of the NDPS Act. In this regard, the learned Addl. P.P. has produced a copy of the Government Notification No.EX.145/85/290 dated 25.04.1995 and Government Notification No.EX.145/85/301 which states as follows :

**“Copy of the Government Notification No.EX.145/85/290 dated 25.04.1995.**

*In exercise of the powers conferred by Sub-Section (1) of Section 42 read with Section 67 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), the Governor of Assam is pleased to empower all Excise Officer of the above rank of Assistant Inspector of Excise Police Officer of and above the rank of Sub-Inspector of Police and Drugs Control officers of and above the rank of Inspector of Drugs to exercise the power and perform the duties specified in Section-42 within the areas of their respective Jurisdiction and also authorise and the said officers to exercise the powers conferred upon them under section 67 of the Act with effect from the date of publication of the notification in the Official Gazette.*

*This modified this Department notification No. Ex 145/85/258 dt. 6-2-89.*

**Copy of Govt. Notification No. EX.145/85/301 Dated Dispur, the 15 May/1995**

*In exercise of the powers conferred by Sub-Section(2) of Section 41 of the Narcotic Drugs and Psychotropic Substances Act, 1985(61 of 1985), the Governor of Assam is pleased to empower all Excise officer of the above the rank of a Inspector of Excise, Police Officer of and above the rank of Inspector of Police and Drugs Control officers of and above the rank of Inspector of Drugs to exercise the powers specified in Sub-Section (2) of the said section within the areas of their respective Jurisdiction with effect from the date of publication of*

*the notification in the Official Gazette."*

**33.** A perusal of the above 2 Notifications shows that a Sub-Inspector of Police has the power to exercise and perform the duties specified under Section 42 of the NDPS Act, while an Inspector of Police has the power to exercise powers in terms of Section 41(2) of the NDPS Act. In the present case, one Inspector Sanjay Kumar Laskar has, under Section 41(2) of the NDPS Act, authorized PW-4 to search any vehicle and premise, vide Authorisation Letter dated 13.02.2022. This letter has been exhibited as Ext.P4/PW-4. The above shows that PW-4 had the authority to conduct a search of the train. In any event, when the said train had stoppage time of 2 minutes in New Bongaigaon Railway Station, and people are allowed to get off and get on the train during the said period, it cannot be said that the train was a closed space at that point of time. As such, it cannot be said that PW-4 did not have the authority/competence to search the said train.

**34.** When there is evidence to the effect that appellant Suraj Kumar Roy had been holding the blue coloured trolley bag and the other two appellants were holding the purple coloured plastic sack, from where *Ganja* had been recovered, it is proved that the appellants were in conscious possession of the drugs which had been seized from their respective trolley bag/sack. Thus, we are of the view that the prosecution was able to establish the foundational facts that the appellants were in conscious possession of *Ganja*, for which the burden of proof shifted to the appellants, to prove their innocence.

**35.** With regard to whether the Officer-in-Charge of the Police Station took charge of the *Ganja* for keeping/safe custody, it should also be noted that there is nothing to show that the provisions of Section 55 has not been followed, inasmuch, PW-6 himself is the Officer-in-Charge. Further, the Hon'ble Supreme Court in the case of ***Gurbax Singh Vs. State Of Haryana***, reported in **(2001) 3 SCC 28** has

held that Sections 52, 55 & 57 of the NDPS Act are not mandatory provisions, but only directory.

**36.** In the present case, when it is proved that the appellants were in possession of their respective bag/sack, it was the duty of the appellants to discharge the burden cast upon them to prove their innocence. We are of the view that the appellants have not been able to discharge the duty cast upon them to prove their innocence under Section 35 of the NDPS Act.

**37.** The above being said, we do not find any documents or evidence to show that the appellants were acting together or had joint ownership of the seized articles. While the blue coloured trolley bag of the appellant Suraj Kumar Roy contained 10.21 kgs. of *Ganja*, the purple coloured plastic sack which was being carried by the other two appellants contained *Ganja* weighing 10.8 kgs. The evidence of the only police personnel who has been made a Prosecution witness in this case, i.e. PW-4, in his cross-examination is to the effect that the train ticket in the name of the appellant Suraj Kumar was in respect of coach number B-1, seat number 19, upper berth. Further, the copy of the other train ticket seemed to be in the name of the appellants Bipin Kumar and Vira Mahato, coach number S-2, seat no. 8 and 6. This evidence of PW-4 gives rise to an inference that the appellant Suraj Kumar Roy did not have any connection with the other two appellants. This has also been explained by the three appellants in their examination under Section 313 Cr.P.C, wherein Suraj Kumar Roy has denied knowing the other two appellants and vice-versa. Keeping the above in view, it cannot be said with certainty that the three appellants were jointly transporting the two seizures of *Ganja* made vide two seizure lists, only on the basis of the evidence of PW-4. As such, we are of the view that the evidence of PW-4 does not prove the guilt of the appellants beyond all reasonable doubt that they had jointly possessed or transported the seized 21.1 kgs of *Ganja*. However, the Prosecution has been able to prove that the appellant Suraj Kumar Roy had in his conscious possession transported

10.21 kgs of Ganja, while the other two appellants have in their conscious possession transported 10.8 kgs of Ganja. In view of the above, we are of the view that even though the prosecution has been able to prove that the appellants were in conscious possession of the drugs that were recovered from the trolley bag/sack, they have not been able to prove that they were in joint possession of the total seized *Ganja* made by way of the two seizure memos. If the seized articles are to be considered separately as per the two seizure lists, the seized articles cannot be said to be of commercial quantity. Accordingly, in view of the reasons stated above, we hold that the appellant Suraj Kumar Roy is guilty of possession of 10.21 kgs. of *Ganja*, which had been recovered from the blue coloured trolley bag. The appellants Bipin Kumar and Vira Mahato are found guilty of possession of 10.8 kgs. of *Ganja* only, which had been recovered from the purple coloured plastic sack. Thus, they are accordingly convicted only under Section 20(b)(ii)(B) of the NDPS Act, 1985. The appellants are accordingly sentenced to undergo rigorous imprisonment for 3½ years each and to pay fine of Rs.1 lakh each, in default of payment of fine, to undergo simple imprisonment for 6 months. Thus, the charge framed under Section 20(b)(ii)(C) of the NDPS Act, 1985 is hereby altered to Section 20(b)(ii)(B) of the NDPS Act, 1985.

**38.** For all the above reasons, the impugned Judgment dated 09.03.2023, passed by the learned Special Judge, Bongaigaon in Special (Nar) Case No. 23(BGN)/2022 and the sentence imposed upon the appellants, are hereby modified to the extent indicated above.

**39.** The appeals are accordingly disposed of.

**40.** Send back the TCR.

**JUDGE**

**JUDGE**

**Comparing Assistant**