

**IN THE COURT OF THE SESSIONS JUDGE-CUM-SPECIAL
JUDGE UNDER THE N.D. & P.S. ACT, KHURDA AT
BHUBANESWAR.**

Present:

Dr. D.P. Choudhury,
Sessions Judge-cum-Special Judge,
Khurda at Bhubaneswar.

Dated, Bhubaneswar the 28th Jan. '15.

T.R. No.62 of 2014.

(Arising out of P.R. No.66/14-15.)

S T A T E

-V e r s u s-

Aisa Bibi, aged about 35 years, W/o. Sarif Khan of Vill. -
Laxmisagar (Haladipadia), P.S. - Laxmisagar, Dist. - Khurda.

... **Accused.**

Counsel:

For prosecution -- Shri B.B. Mohanty,(P.P. in charge).

For defence -- Suchitra Routray & Associates.

Offence under section 21(b), N.D. & P.S. Act, 1985.

Date of conclusion of arguments : 19.01.2015.

Date of judgment : 28.01.2015.

J U D G M E N T

Accused stands charged for the offence punishable
under section 21(b) of the Narcotic Drugs and Psychotropic

Substances Act, 1985 (hereinafter called “the Act”).

2. Factual matrix leading to the case of the prosecution is that on 11.07.2014 at about 8 A.M., while the S.I. of Excise was patrolling along with his staff on the road leading to Haladipadia under Laxmisagar Police Station, they found the accused carrying a plastic bag and on seeing their vehicle, she became perturbed. So, the Excise Staff detained her. On enquiry, the accused confessed to have been carrying Heroin (Brown Sugar). Then, the Excise Staff informed their Superior Authority under the provisions of the Act. The S.I. of Excise solicited the option of the accused whether to be searched before a Magistrate or a Gazetted Officer or before themselves. She gave consent to be searched before the Excise Officers. Then, the S.I. of Excise, after observing formalities before the accused and the witnesses, gave his personal search and search of the witnesses, after which the accused was searched by the Excise Officer. On search, they found that the accused was in possession of a plastic bag containing a plastic tiffin container having nine paper packets each containing 0.265 mg of Brown Sugar (Heroin) powder and a polythene packet containing 31.475 gms of the said contraband substance. The bag recovered from the accused also contained cash of Rs.1,210/- and her Voter I. Card. After taking

measurement of the said Brown Sugar powder, the S.I. of Excise tested the powder by Drug Testing Kit and confirmed the same as Brown Sugar (Heroin). Out of his experience, the S.I. of Excise also came to know that it was Brown Sugar. The accused had no licence for possessing the same. Then, the S.I. of Excise made seizure of the plastic bag, tiffin box containing nine Pudias of Brown Sugar, a polythene packet containing Brown Sugar, Voter I. Card and cash from the accused. The S.I. of Excise prepared seizure list and gave copy of the same to the accused as per provisions of the Act. He also sealed the seized properties as per provisions of the Act and Rules in presence of witnesses. Then, they produced the seized properties before the learned S.D.J.M., Bhubaneswar, in whose presence sample of the seized Brown Sugar was drawn and sent to Drug Testing Laboratory for examination. The tiffin box, polythene packet and bag in question were again resealed. During enquiry, the accused was arrested and produced before the Court. On completion of enquiry, the S.I. of Excise submitted Prosecution Report.

3. Plea of the accused is squarely denial to the charge levelled against her and, according to her, she is a tailor by profession.

4. The main point for determination is :

Whether the accused was found in unlawful possession and transportation of 33.860 Grams of contraband Heroin (Brown Sugar) for the purpose of illegal sale, in contravention of Section 8 of the Act ?

5. Prosecution in order to bring home the charge against the accused has examined three witnesses, out of whom P.W.2 is the concerned S.I. of Excise; P.W.1 is the Excise Constable; and P.W.3 is an outsider. Defence has examined none.

6. It is well settled law that the evidence of official witnesses cannot be discarded merely because they are official witnesses, but their evidence should be scrutinized with due care and caution. It is also well settled law that the Court should separate the grain from the chaff. Evidence has to be weighed but not to be counted. Bearing in mind the above principles, let me find out if the charge against the accused has been well proved by the prosecution.

7. Their Lordships in the case of *State of Punjab Vs. Baldev Singh* reported in **(1999) 6 SCC 172** have been pleased to observe in paragraphs 9 & 10 as under :

“Sub-section (1) of Section 42 lays down that the empowered officer, if has a prior information given by any person, he should necessarily take it down in writing and where

he has reason to believe from his personal knowledge that offences under Chapter IV have been committed or that materials which may furnish evidence of commission of such offences are concealed in any building etc., he may carry out the arrest or search, without a warrant between sunrise and sunset, and he may do so without recording his reasons of belief.

The proviso to Sub-section (1) lays down that if the empowered officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place, at any time between sunset and sunrise, after recording the grounds of his belief. Vide Sub-section (2) of Section 42, the empowered officer who takes down information in writing or records the grounds of his belief under the proviso to Sub-section (1), shall forthwith send a copy of the same to his immediate official superior. Section 43 deals with the power of seizure and arrest of the suspect in a public place. The material difference between the provisions of Section 43 and Section 42 is that whereas Section 42 is that whereas Section 42 requires recording of reasons for belief and for taking down of information received in writing with regard to the commission of an offence before conducting search and seizure. Section 43 does not contain any such provision and as such while acting under Section 43 of the Act, the empowered officer has the power of seizure of the article etc. and arrest of a person who is found to be in possession of any narcotic drug or psychotropic substance in a public place where such possession appears to him to be unlawful”.

8. Following the above decision, Their Lordships of the Hon’ble Apex Court in the case of *The State of West*

officer was not in the police station, but while he was on the move either on patrol duty or otherwise, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be feasible or practical to take down in writing the information given to him, in such a situation, he could take action as per clauses (a) to (d) of Section 42(1) and thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to the official superior.

(c) In other words, the compliance with the requirements of Section 42(1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is, after the search, entry and seizure. The question is one of urgency and expediency.

(d) While total non-compliance with requirements of sub-sections (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance with Section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending of a copy of such information to the official superior forthwith, may not be treated as violation of Section 42. But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of

Section 42 of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of Section 42 of the Act. Whether there is adequate or substantial compliance with Section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to Section 42 by Act 9 of 2001”.

11. With due respect to the said decision, I find that total non-compliance with section 42 of the Act is impermissible, but delayed compliance or substantial compliance with the said section will be taken as compliance with section 42 of the Act and they are dependent on the facts of each case.

12. In the case of *Nirmal Singh Pehlwan @ Nimma Vs. Inspector, Customs, Customs House, Punjab* reported in **(2011) 50 OCR (SC) - 214**, Their Lordships have been pleased to observe at paragraph-9 as under :

“It is therefore apparent that the precise question that was before the Constitution Bench was as to whether a consent memo could be said to be information conveyed to an accused as to his right under Section 50 of the Act. The Constitution Bench clearly stated that a consent memo could not be said to be such information as the provisions of Section 50 of the Act were mandatory and strict compliance was called for and any deviation therefrom would vitiate the prosecution. It was further held that it was not necessary that this information should be in a written form but the information had

to be conveyed in some form or manner which would depend on the facts of the case. We have accordingly gone through the evidence of P.W.4 Prem Singh. He did not utter a single word as to whether he had informed the appellant of his right and he merely took his option as to whether he would like to be searched before a Gazetted Officer or a Magistrate as noted in Ext.P.A. In the light of the judgment in Vijaisingh's case (supra) we find that there has been complete non-compliance with the provisions of Section 50 of the Act”.

With due respect to the said decision, I find that non-compliance of Section 50 of the Act will also give benefit to the accused.

13. Their Lordships of the Hon'ble Apex Court in the case of *Krishan Kumar Vs. State of Haryana* reported in **2014 (3) Crimes 282 (SC)** have been pleased to observe at para-12 as under :

“It is clear from the reading of the aforesaid provision that it is applicable only where search of a person is involved. It is not made applicable in those cases where no search of a person is to be conducted. In the instant case the appellant was carrying a bag which was to be searched and on his request Chet Ram was summoned in whose presence search was conducted which pertained to a bag. In *Ajmer Singh Vs. State of Haryana* (2010) 3 SCC 746 this aspect is specifically considered and dealt with. Following earlier Constitution Bench judgment, the Court held that when search and recovery from a bag, brief case, container etc. is to be made, provisions of Section 50 of the Act are not attracted.....”.

14. With due respect to the above decision, I find that

section 50 of the Act is not attracted if the accused is carrying any bag or luggage containing contraband substance. In the instant case, it is alleged that the accused was carrying a bag containing contraband Brown Sugar for which compliance of section 50 of the Act is redundant. Bearing in mind the principles, as enunciated above, let me find out if at all the prosecution has been able to prove the charge against the accused.

15. It is revealed from P.W.2 that on 11.07.2014, he along with P.W.1 went for patrolling duty at Laxmisagar area. According to him, they saw the accused going from Laxmisagar to Sarala Nagar holding a plastic bag in her right hand. After seeing them, the accused started running. So, they stopped the vehicle and asked P.W.1 to chase the accused. P.W.1 stopped the accused and he reached the spot. P.W.2 asked the accused about the contents of the bag and, in the meantime, two outsiders also arrived there. He further revealed that he informed their Authority, who is the Inspector of Excise, namely, Amarendra Kumar Jena about this case over telephone, who asked him to go ahead as per the provisions of law. Then, he asked the accused about her identity, who disclosed the same. The accused informed P.W.2 that she was carrying Brown Sugar, Voter I. Card and cash. P.W.2 gave his

identity to the accused and the witnesses. Then, he collected the identity of the witnesses. Afterwards, he asked the accused to exercise her option whether she wants to be searched in presence of an Executive Magistrate or a Gazetted Officer or by the Excise Officials. She gave her option to be searched by them and such consent was given in a printed form by signing the same. He proved the option offered to the accused vide Ext.1 and the signature of the accused vide Ext.1/2. He also proved the consent memo of the accused vide Ext.2 and signature of the accused vide Ext.2/2.

16. P.W.2 asked the Excise Woman Constable (P.W.1) to search the accused. P.W.1 gave her personal search to the accused and searched the accused in his presence and witnesses. On search, the accused was found in possession of a plastic tiffin box having nine Pudias, each containing Brown Sugar; a polythene packet containing Brown Sugar; twelve pieces of brown coloured blank papers; one Voter I. Card of the accused; and cash of Rs.1,210/-. After opening the above Pudias and polythene packet, he found Brown Sugar. From colour, texture, smell and out of his seven years of service experience, followed by Distillery Training undertaken by him, he came to know the same to be Brown Sugar. According to him, he had taken Drug Testing Kit with him and the

contraband article was tested by him at the spot by spot plate, which changed the colour into pale rose. From such test and from his service experience, he could know the substance to be Brown Sugar. He prepared the Drug Testing Chart vide Ext.6 and signature of the accused vide Ext.6/2. Then, he measured each Pudia which contained 0.265 mg and, as such, it became 2.385 gms of Brown Sugar. Then, he measured the polythene packet which contained 31.475 gms of Brown Sugar. He kept all the contraband articles in their respective Pudias and polythene packet inside the plastic tiffin box. Then, he sealed the tiffin box and also the plastic bag with his personal seal. Before sealing, he made seizure of the plastic bag, tiffin box containing above Pudias and polythene packet, which contained Brown Sugar, Voter I. Card of the accused and cash of Rs.1,210/- from the possession of the accused. After sealing, he prepared the seizure list, read over and explained the contents thereof to the accused and the witnesses, who signed thereon. He proved the seizure list vide Ext.3 and the signature of the accused vide Ext.3/2. Ext.3/3 is the signature of the accused on the back side of the seizure list. He gave zima of his seal to witness Abdul Rafiq Khan, who executed zimanama vide Ext.4. Ext.4/2 is the signature of the accused and Ext.4/3 is his signature.

17. P.W.2 has further stated that the accused confessed before him that she was in possession of the seized properties, including Brown Sugar, and her confessional statement is Ext.8. Ext.8/1 is her signature. He further stated that he prepared sketch map vide Ext.7 and then arrested the accused and produced her before the Court. According to P.W.2, he produced the seized properties before the learned S.D.J.M., Bhubaneswar, in whose presence, sample thereof was drawn and sent to Drug Testing Laboratory, Bhubaneswar. He proved the office copy of the forwarding letter vide Ext.9. After taking sample, he resealed the tiffin box and the bag in question and left the rest of the seized Brown Sugar with containers, plastic bag and cash in the Court Malkhana. He proved the Drug Testing Report vide Ext.10. In compliance with the provisions of the Act, he prepared the reasons of Arrest of the accused vide Ext.5. He proved the signature of the accused vide Ext.5/2 and his signature vide Ext.5/3. Not only this, but also he proved the seized plastic tiffin box containing the seized Pudias vide M.O.I; packet containing broken seal vide M.O.II, and the packet containing rest of the sample of Brown Sugar, after sending sample of the same to the Drug Testing Laboratory, vide M.O.III. About the seized cash, he stated that the same has been deposited through

challan. The copy of Voter I. Card of the accused was marked Ext.13. He proved the signature of the accused vide Ext.13/1. He has been cross-examined at length. During cross-examination, in para-10, he revealed that at about 8.10 A.M., they reached the patrolling area. In fact, Ext.3 shows that they left for patrolling at 8.10 A.M. With regard to option, he revealed that the option memo was used vide Ext.1. He has also explained the duty and meaning of Gazetted Officer and Executive Magistrate to the accused. In cross-examination, he confirmed that Ext.2 is a printed form under which the accused gave consent to be searched by them. Here a question begs answer when the printed form was used, whether it can be taken as consent of the accused to be searched by the Excise Officer ? When no objection is raised by the defence whether the accused understands the printed form, the printed form is a stereotype form used by the prosecution and after understanding the same, signature of the accused has been taken, it must be held that such contents of the printed form being well understood by the accused has been used whereon she put her signature. About measurement, he categorically stated in para-11 of his cross-examination that he brought different denominations of weights and measures for which no doubt should be entertained about measurement of the seized

contraband article. He clarified that their office is directly under the control and supervision of Excise Deputy Commissioner. But, he has stated in his examination-in-chief that he has submitted his report to the Inspector of Excise Shri A.K. Jena. Section 42 of the Act requires that information must be given to superior Authority. Even if their office is coming under the control of the Deputy Commissioner of Excise, but the Inspector of Excise is definitely superior to P.W.2, who is the S.I. of Excise. So, on this aspect, there is no anomaly and the provisions of section 42 of the Act seem to have been complied with as per the evidence of P.W.2 because he has duly informed his superior Authority, as required under the said Act. With regard to his experience, in cross-examination in para-9, he stated that he has got seven years of experience in the Department and he has also undergone distillery training. So, the evidence of P.W.2 in respect of search, seizure and test of the seized Brown Sugar remained undisturbed in spite of strenuous cross-examination. Not only this, but also denying the suggestion of defence, he stated that the accused confessed before him about her guilt. That apart, there is no meaningful cross-examination to this witness to discard his testimony. At the same time, the documents exhibited by him simply corroborate the evidence of P.W.1.

18. From the foregoing discussions, it appears that the statement of P.W.2 is cogent, clear and consistent to prove that the accused was duly searched after her option was given to be searched by the Excise Officer. His evidence is also transparent and above reproach to show that after recovery of nine Pudias and a polythene packet containing Brown Sugar and other articles, namely, Voter I. Card of the accused and cash of Rs.1,210/-, he measured the contraband article and then made seizure of the same. His evidence is also clear to show that the accused voluntarily confessed before them about carrying of such contraband article with other seized properties. It is well settled law that confession before an Excise Officer is also admissible in law being not hit by section 25 of the Evidence Act. Besides, his evidence is clear and undisturbed to show that he had tested the contraband article and found the same to be Brown Sugar by virtue of his service experience and the training undergone by him. Not only this, but also, his evidence discloses that after seizure, he informed his Authority about the factum of search and seizure, as required under the provisions of the Act. On the whole, the statement of P.W.2 being in no way incredible has proved due search, seizure, measurement and testing of the contraband article seized from the possession of the accused.

19. It is revealed from the evidence of P.W.1 that she being an Excise Constable working in Excise Enforcement Office of Bhubaneswar has corroborated the evidence of P.W.2. She has testified that while patrolling, they found the accused carrying a white polythene bag and on seeing them, she started walking speedily. Suspecting her conduct, they stopped her. The outsiders reached there. The S.I. of Excise noted down the address of the witnesses. Corroborating the evidence of P.W.2, she stated that the S.I. of Excise asked the accused whether she wants to be searched in presence of Executive Magistrate or by them to which the accused replied for being searched by them. She proved the option memo vide Ext.1, her signature thereon vide Ext.1/1 and the signature of the accused vide Ext.1/2. She also proved the reply of the accused vide Ext.2 and her signature vide Ext.2/2. It is further revealed from her evidence that a plastic bag containing 31.475 grams of powder, nine Pudias each containing 0.265 ml grams of powder and such powder being Brown Sugar have been seized from the possession of the accused. She proved the seizure list vide Ext.3, which also shows about seizure of such property, including cash, from the possession of the accused. Moreover, her statement corroborates P.W.2 as to testing of Brown Sugar by P.W.2 and from her nineteen years of

experience she confirmed the same to be Brown Sugar. She also corroborated the evidence of P.W.2 as to taking of sample of the seized Brown Sugar by him. But, there is contradiction with the evidence of P.W.2 as to where sample was taken, as she stated that sample of the packets was drawn at the spot whereas according to P.W.2 it was not taken at the spot. The said contradiction is minor one which can be overcome by considering the fact that official witnesses always cannot meet all the points. On the other hand, the statement of P.W.1 can be credible to the extent it corroborates P.W.2 because she being subordinate to P.W.2 has not spelt out the evidence being pressurised by the superior officer. She also stated that the packets were sealed by the brass seal of the I.O., which was handed over to witness Abdul Rafiq Khan. She also proved the drug testing report vide Ext.6 and her signature thereon vide Ext.6/1. In cross-examination, her evidence has not been well shaken. It is clear from her cross-examination that option letter and reply of the accused were in prescribed printed form, but the accused after understanding the contents thereof signed giving her consent to be searched by the Excise Officer. So, there is no doubt over her statement as to the formalities of search of the accused maintained under section 50 of the Act, although such provision is not attracted in this case as

per the decision in *Krishan Kumar Vs. State of Haryana* (supra).

20. Thus, on analysis of the statement of P.W.1, it is clear that she has proved the necessary search, measurement, testing and seizure of plastic bag which contained total 33.860 grams of Brown Sugar and cash of Rs.1,210/- from the possession of the accused. Hence, the evidence of P.W.1 lends ample corroboration to P.W.2 as to the material particulars of search and seizure of 33.860 grams of Brown Sugar from the possession of the accused.

21. P.W.3 expressed his ignorance about search of the property, but police obtained his signature vide Ext.1/4. He has been cross-examined by learned Public Prosecutor in-charge. During course of cross-examination by learned P.P., he admitted that he has read upto Class-VI and his signature appears on the printed form; but he did not explain how he signed in the printed form. Moreover, his house is only 100 metres away from the house of the accused. In cross-examination, he denied to have stated before police about necessary search, seizure, testing and seal of the seized property. In cross-examination, he stated that he was not present at the spot at the time when the accused was apprehended; but, at the same time, he has stated that the

place of seizure is a busy place and there were good number of shops. If he was not present at the spot, it is not understood how he came to know that the place of seizure is a busy place. Thus, it appears that he has avoided to support the prosecution, although he has admitted his signatures in the necessary documents like consent memo, seizure list and other relevant documents. When the evidence of P.W.3 shows that he is hostile to the prosecution and in no way his evidence can be taken into consideration, it appears that he has tried to sail in the same boat of the accused being her close neighbour. So, non-corroboration of the evidence of the official witnesses by this independent witness does not *ipso facto* demolish the case of the prosecution because of hostility to the prosecution and lending support to the defence for the reasons best known to him.

22. In view of the aforesaid analysis, I find that the prosecution has well proved in consistent, clear and cogent evidence of official witnesses, whose evidence has already been scrutinized with great care and caution, that the accused was in possession of 33.860 grams of Brown Sugar and the same were seized from her possession. Not only this, but also the evidence of P.W.2 shows that he has sent the sample of Brown Sugar to Drug Testing Laboratory vide Ext.9 and the Drug

Testing Laboratory has confirmed the seized property as Brown Sugar. I went through Ext.10, the chemical examination report, and from this document, it appears that the sample of seized powder sent is nothing but Diacetyl Morphine or Heroin (Brown Sugar), as defined under section 2(xvi)(e) of the Act. So, the prosecution has proved by the evidence of P.Ws.1 & 2 read with all the documents, as discussed above, that the accused was in illegal possession of 33.860 grams of Brown Sugar as she has no document to show her lawful possession thereon.

23. Learned counsel appearing for the accused submitted that there is no compliance of section 42 of the Act at all. I have already observed in the foregoing paragraphs that P.W.2 has proved to have sent the information complying with section 42 of the Act. Learned defence counsel further submitted that there is no compliance of section 50 of the Act for which the accused is entitled to an acquittal.

24. Since plastic bag was being carried by the accused, compliance with the requirement of section 50 of the Act is not necessary, as discussed in the foregoing paragraphs. However, as discussed herein-above, the prosecution has proved the option extended to the accused for being searched by a Gazetted Officer or by the Excise Staff and necessary consent

of the accused was obtained vide Ext.2 to be searched by the Excise Officer. So, the contention of learned defence counsel does merit no consideration. Learned defence counsel further submitted that there is no provision under section 52 and other provisions of the Act complied by the Department. Her argument looks very nice, but there is no material shown by her to prove that necessary provisions of the Act have not been complied with by the prosecution to give benefit of doubt to the accused.

25. In view of the aforesaid analysis, I find that the prosecution has well proved the offence under section 21(b) of the Act against the accused beyond all shadow of doubts. As such, I hold the accused guilty of the offence punishable under section 21(b) of the Act and I convict her thereunder.

**Sessions Judge-cum-Special Judge,
Khurda at Bhubaneswar.**

28.01.2015.

Dictated, corrected by me and pronounced in the open Court this day the 28th January, 2015.

**Sessions Judge-cum-Special Judge,
Khurda at Bhubaneswar.**

28.01.2015.

HEARING ON THE QUESTION OF SENTENCE.

26. Even if the convict is a woman, in view of section

33 of the Act, Probation of Offenders Act, 1958 and section 360 of the Code of Criminal Procedure, 1973 are not applicable to this case.

27. Heard learned counsel for defence and learned Public Prosecutor in-charge. Learned counsel for defence submitted that the convict is a woman, she was in possession of Brown Sugar, which is little more than small quantity but much below than the commercial quantity, and there is no previous conviction against her for which a lenient view may be taken while awarding the sentence. On the other hand, it was the submission of learned Special P.P. that the offence committed is against society at large inasmuch as the drug pedlars have caused immense loss to the nation by smuggling drugs and misguiding the youth for which he proposed for awarding an exemplary punishment.

28. While awarding sentence, the Court is required to concentrate on aggravating circumstances and mitigating circumstances. In the case at hand, aggravating circumstances are that the convict was roaming in the street with Pudias of Brown Sugar, which is injurious to health, obviously for the purpose of sale as money has also been collected by her. The mitigating circumstances against the convict are that she is a woman having no previous conviction and she was found in

possession of 33.860 grams of Brown Sugar, which is more than 5 grams (small quantity) but below 250 grams (commercial quantity) as per the provisions of the Act and Rules. Of course, there is no evidence of sale, but money has been seized and deposited by challan as per the evidence of prosecution witnesses.

29. So, balancing the aggravating circumstances and mitigating circumstances and in order to meet the ends of justice, I sentence the convict to undergo Rigorous Imprisonment for a term of 3 (three) years and to pay a fine of Rs.50,000/- (Rupees Fifty Thousand), in default, to undergo Rigorous Imprisonment for a further period of 6 (six) months for the offence under section 21(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985. The period undergone by the convict as U.T.P. be set off against the sentence of imprisonment as per section 428 of the Code of Criminal Procedure.

30. The seized Heroin (Brown Sugar) be handed over to the Superintendent of Excise, Khurda for destruction in accordance with law, the seized cash of Rs.1,210/- and brass seal be confiscated to the State, the broken seals, etc. be destroyed and the zimanama be cancelled on expiry of four months of period of appeal if no appeal is preferred; in case of

appeal, the same be dealt with as per the orders of the Hon'ble Appellate Court.

**Sessions Judge-cum-Special Judge,
Khurda at Bhubaneswar.
28.01.2015.**

Dictated, corrected by me and pronounced in the open Court this day the 28th January, 2015.

**Sessions Judge-cum-Special Judge,
Khurda at Bhubaneswar.
28.01.2015.**

List of witnesses examined for prosecution.

P.W.1	--	Anupama Dash,
P.W.2	--	Jagadish Chandra Samal &
P.W.3	--	Abdul Rafique Khan.

List of witnesses examined for defence.

Nil.

List of documents admitted in evidence for prosecution.

Ext.1	--	Option Memo,
Ext.1/1	--	Signature of P.W.1 in Ext.1,
Ext.1/2	--	Signature of accused in Ext.1,
Ext.2	--	Reply of accused,
Ext.2/1	--	Signature of P.W.1 in Ext.2,
Ext.2/2	--	Signature of accused in Ext.2,
Ext.3	--	Seizure list,
Ext.3/1	--	Signature of P.W.1 in Ext.3,
Ext.3/2	--	Signature of accused in Ext.3,
Ext.3/3	--	Signature of accused in Ext.3,
Ext.4	--	Zimanama,
Ext.4/1	--	Signature of P.W.1 in Ext.4,
Ext.4/2	--	Signature of accused in Ext.4,

Ext.5 -- Arrest Memo,
 Ext.5/1 -- Signature of P.W.1 in Ext.5,
 Ext.5/2 -- Signature of accused in Ext.5,
 Ext.6 -- Drug Testing Chart,
 Ext.6/1 -- Signature of P.W.1 in Ext.6,
 Ext.7 -- Sketch Map,
 Ext.7/1 -- Signature of P.W.1 in Ext.7,
 Ext.1/3 -- Signature of P.W.2 in Ext.1,
 Ext.2/3 -- Signature of P.W.2 in Ext.2,
 Ext.6/3 -- Signature of P.W.2 in Ext.6,
 Ext.3/4 -- Signature of P.W.2 in Ext.3,
 Ext.4/3 -- Signature of P.W.2 in Ext.4,
 Ext.8 -- Confessional Statement of accused,
 Ext.8/1 -- Signature of accused in Ext.8,
 Ext.8/2 -- Signature of P.W.2 in Ext.8,
 Ext.7/2 -- Signature of accused in Ext.7,
 Ext.7/3 -- Signature of P.W.2 in Ext.7,
 Ext.9 -- Office copy of forwarding letter of
 SDJM, Bhubaneswar,
 Ext.9/1 -- Signature of SDJM, Bhubaneswar in Ext.9,
 Ext.10 -- Drug Testing Report,
 Ext.5/3 -- Signature of P.W.2 in Ext.5,
 Ext.11 -- Copy of Duty Register,
 Ext.12 -- Copy of Vehicle Movement Register,
 Ext.13 -- Photo copy of Voter I. Card of accused,
 Ext.13/1 -- Signature of accused in Ext.13,
 Ext.13/2 -- Signature of P.W.2 in Ext.13,
 Ext.1/4 -- Signature of P.W.3 in Ext.1,
 Ext.2/4 -- Signature of P.W.3 in Ext.2,
 Ext.3/5 -- Signature of P.W.3 in Ext.3,
 Ext.4/4 -- Signature of P.W.3 in Ext.4,
 Ext.5/4 -- Signature of P.W.3 in Ext.5,
 Ext.6/4 -- Signature of P.W.3 in Ext.6,
 Ext.7/4 -- Signature of P.W.3 in Ext.7, &

