

MINUTES OF THE MEETING HELD ON 19-06-2021

This meeting is convened today i.e. on 19-06-2021 at 3:00 PM in the Conference Hall of the Bongaigaon Court Building under the Chairmanship of the Hon'ble District and Sessions Judge, Bongaigaon and in presence of the members mentioned below. (Attendance sheet of members present is annexed as Annexure I)

The Agenda put up for discussion in the meeting is with regard to various aspects of investigation, seizure, sampling, inventory and disposal of seized articles in NDPS Cases.

Learned. Sub Divisional Judicial Magistrate (S), Bongaigaon Smt. Rubina Yasmin has delivered the welcome speech and introduced all the participants of the meeting.

Additional Superintendent of Police, Bongaigaon Sri Pankaj Kakoti has delivered a speech explaining the purpose of the meeting.

1. Superintendent of Police, Bongaigaon Sri Swapnaneel Deka in his speech has shared his experience and knowledge of a conference that he attended at Kaziranga where Hon'ble Chief Minister of Assam directed the Police department to be strict regarding crimes relating to NDPS cases and for removing the loopholes during investigation to improve the conviction rate in NDPS cases. He has stated that, according to (NCRB) National Crime Record Bureau, Assam is the second lowest state in terms of conviction of cases under NDPS Act. He has further stated that following the motto of the Government 'Zero Tolerance on Drugs' the Police officials of Bongaigaon District shall leave no stone unturned to eradicate the

menace of drug abuse in the District. He has further stated that due to the lack of knowledge among the investigating officers, the conviction rate is very low and presently rate of conviction in NDPS cases in Assam is only 6.7 %. He has stated that in a platform like this the field officers may discuss and consult the difficulties and problems faced by them specially with regard to NDPS cases and they shall try to eradicate the loopholes in the process of investigation, preparation of inventory, sampling etc. He has also suggested that a Law Officer is highly required to help and assist the investigating wing of the Police Department to ensure conviction specially in NDPS cases. He has also brought to the attention of the members of the meeting regarding delay in correspondence from the FSL and receiving the reports from them and he emphasised on increasing the number of FSLs in the State. He has informed the gathering that the Hon'ble Chief Minister of Assam has endeavoured for establishing seven numbers of new FSLs in the state. He has further suggested that there should be proper format for charge sheet specially in NDPS cases and the investigating officers should prepare a draft charge sheet and get it checked by the senior officers before submission. He has also emphasised on implementation of Assam Ganja Act 1958, which is very rarely considered in drugs related cases.

2. Hon'ble District and Sessions Judge, Bongaigaon, Sri S.N Sarma in his speech emphasised on certain points such as :

- i) Reasons for low conviction rate in NDPS Cases.
- ii) Implementation of Section 52 A in its letter and spirit while drawing samples and preparing inventory. (Certification is to be done properly. Sampling should be done before the Magistrate. Certificate should be signed by the Magistrate. CD should contain table of contents. Seized drugs should not be produced before the Court by the same person who has seized the drugs etc.)

iii) Remand of Arrestee: Section 52(2) of the NDPS Act stipulates that every person arrested and every article seized under Section 41(2), 43 or 44 of the Act shall be forwarded without unnecessary delay to the officer in charge of the nearest police station or the officer empowered under section 53.

iv) The compliance of Procedural requirement prescribed under Sec 50(2) of the NDPS Act, is mandatory. (Applicable only to body search)

v) In case of body search, the exception of section 50(2) is provided under Section 50(5), which empowers the Officer to conduct the search himself and after such search, he must record the reasons for such belief and send it to his immediate senior within 72 hours. The compliance of section 50 (6) of the NDPS Act is mandatory.

vi) It is important that the seized substance and samples are handled properly and in prescribed manner so that an unbroken and safe chain of custody is maintained from the time of recovery and seizure till they are produced before the laboratory and the court. Following the prescribed procedures nullifies allegations by the accused person of tampering, substitution, etc.

vii) Standing Instruction NO. 1/88 dated 15-03-1988 of Narcotics Control Bureau, Govt. of India prescribes detailed procedure for sampling. Officer should take note of the salient features

viii) The arresting officer should comply with the guidelines set forth by the Supreme Court of India in the case of DK Basu Vs State of West Bengal.

ix) Seizure and arrest report : The officer after making any seizure and/or arrest under the Act, shall make a full report of all the particulars of such seizure and /or arrest to his immediate superior officer within 48 hours after such seizure or arrest under section 57 of the NDPS Act.

x) Seized materials in NDPS case are to be disposed of before trial and within 30 days from the date of receipt of report from the FSL.

Hon'ble District and Sessions Judge has asked the investigating officers to take suggestions and help from Public Prosecutors if they find any complication or difficulty in NDPS case.

3. Learned Public Prosecutor, Sri Rajesh Kr. Barman has mainly emphasised on search and seizure of NDPS Act and stated that the whole trial is based on how the search and seizure is done by the investigating officer. He has also emphasised on following proper procedure of sampling. Further Rajesh Kr. Barman has suggested that when a body search is conducted on suspected person/accused, the same should be mentioned in the CD and the procedure prescribed u/s 50 of the NDPS Act must be followed. He stated that the presence of independent witnesses is not mandatory and if no independent witness is available, the same shall not be fatal to the case. He has suggested that in certain appropriate cases the charge of criminal conspiracy may also be added. Further he has suggested the investigating officers to follow the confiscation procedure prescribed u/s 60 of NDPS act.

4. Learned DLSA Secretary, Bongaigaon Mr. Tarun Dey has stated in his speech that he has studied about 25 judgments of various Courts of Assam with regard to NDPS Act and found that the main reason behind acquittal is due to violation of Section 42 clause I and II of NDPS Act.

5. Learned Chief Judicial Magistrate, Bongaigaon Nilakshi Lahkar deliberated on the mandatory provisions to be followed under NDPS Act regarding investigation and the process of initiation of investigation.

6. Learned Additional Chief Judicial Magistrate, Bongaigaon deliberated on the Law laid down in "Union of India vs Mohan Lal & Anr.", 08-01-2016.

7. Learned Civil Judge and Assistant Sessions Judge, Bongaigaon Smt. Aklima Begum deliberated on the procedure of disposal of seized articles in NDPS cases.
8. Learned Sub Divisional Judicial Magistrate (M) North Salmara, Abhayapuri Munmee Neog in her speech stated that who are the authorised persons to conduct investigation, search and seizure in cases involved in NDPS Act. She has further stated that unauthorised persons should not conduct search and seizure and within 72 hours of seizure, the senior officer must be intimated. She has also emphasised on compliance of section 42 of the NDPS Act and for issuance of authority letter. She has further stated that in certain cases counseling to the witness should be provided before recording of their deposition by the Special PP and in certain cases the I/O may also take help of Public Prosecutor in case of any complicity or confusion. Smt. Munmee Neog has further stated that if the seizure could not be done on the spot at the place of search due to certain unavoidable situations the reason for shifting of place of seizure should be mentioned in the CD.
9. Thereafter the members of the meeting interacted with Judicial Officers and various aspects relating to investigation, sampling and preparation of inventory are discussed amongst the members. Investigating officers and O/Cs of various Police Stations have also raised certain questions relating to the difficulties faced by them in the field and the judicial officers present have answered to their queries.
10. A concise guide for field officers of NDPS case is prepared by Ld. Munsiff-cum-JMFC, Bongaigaon Sri Pallab Bordoloi, the copies of which are distributed among the I/Os and O/Cs present in the meeting.

11. At last the Superintendent of Police, Bongaigaon has requested the Hon'ble District and Sessions Judge, Bongaigaon to convene another meeting with all the Judicial Officers, I/Os and O/Cs and all other stake holders with regard to POCSO Act and Crime against Women in the up coming month.

12. The meeting ended with vote of thanks delivered by Ld. Munsiff-cum-JMFC, North Salmara, Abhayapuri Smt. Midusmita Devi.

Sd/-

District and Sessions Judge,
Bongaigaon

Memo No. DJB/2021 2748-52 Dated Bongaigaon the 01st July, 2021

Copy forwarded for information to :

1. The Chief Judicial Magistrate, Bongaigaon
2. The Superintendent of Police, Bongaigaon
3. DLSA, Secretary, Bongaigaon
4. SDPO N/S Abhayapuri
- ✓ 5. System Officer, Bongaigaon. He is asked to upload the minute in our official website.
6. Office Copy.

19/6/21
Chief Administrative Officer
O/o District and Sessions Judge
Bongaigaon