



CGHC010003672005



2026:CGHC:30414

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 738 of 2005

Reserved on : 19.06.2026

Delivered on : 17.07.2026

Parwati @ Bhanmati @ Balmma W/o Laxmeya Reddy, aged about 46 years,
Occupation House Wife, Resident of Balaji Nagar, Khursipar, Thana Chawni,
District- Durg (C.G.)

... Appellant (s)

versus

The State of Chhattisgarh through the District Magistrate Durg (C.G.)

... Respondent

For Appellant : Mrs. Indira Tripathi, Advocate.

For State : Ms. Prachi Singh, Panel Lawyer.

Hon'ble Shri Justice Narendra Kumar Vyas

CAV JUDGMENT

1. This appeal has been preferred by the appellant under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment of conviction and order of sentence dated 12.09.2005 passed by learned Special Judge (NDPS Act), Durg, District- Durg (C.G.) in NDPS Special Case No. 06/2004, whereby the appellant stands convicted under Section 8(C) read with Section 20(b)(ii)(B) of Narcotic Drug and Psychotropic Substances Act, 1985 (for short "the NDPS Act") and sentenced to undergo R.I. for 4 years and fine of Rs. 10,000/- and in default of payment of fine to undergo further R.I. for one year.
2. The case of the prosecution, in brief, is that on 26.01.2004 during patrolling, I.R. Sahu (PW-6) Sub-Inspector/Police Chowki Incharge,

Khursipar, received a secret information that the appellant has kept ganja illegally in her house situated at Balaji Nagar, Khursipar. The said information was reduced into writing and forwarded to the City Superintendent of Police on 26.01.2004 (Ex. P/14). Thereafter, I.R. Sahu (PW-6) along with other police personnel and witnesses proceeded to the spot, informed the appellant that they have received information regarding possession of ganja by her and obtained her consent for search of her house through any gazetted officer or magistrate for which she consented for examination by the Investigating Officer (Ex. P/15). Before seizure, Investigating Officer and Devendra/constable got searched by the appellant (Ex. P/3) and during search of the house, they recovered two bags containing 9 kg. & 6 kg. (total 15 kg.) of ganja (Ex. P/7) and prepared house search panchnama (Ex. P/5). The seized contraband was weighed in presence of the appellant and the witnesses. The map (Ex. P/12) was also prepared in presence of the appellant and other witnesses wherein it has been mentioned that there was no lease or allotment by the Corporation in favour of the appellant and the contraband was seized within the house. Two samples of 25-25 grams each were prepared from both the bags, sealed, seized and marked as Article A1 & A2.

3. It is also case of the prosecution that the seized contraband and samples were registered in the register maintained for seized item (Ex. P/13) mentioning that the four packets were deposited out of which two packets were marked as Article A1 & A2 which are the samples of 25-25 grams each. Thereafter dehati nalsi (Ex. P/16) was prepared and the appellant was arrested from the place of incident and on the basis

of dehati nalisi, FIR (Ex. P/17) bearing Crime No. 00/2004 dated 26.01.2004 was registered against the appellant by the P.S. Chhavni Khursipar, District- Durg for commission of offence under Section 20(b) of the NDPS Act. The samples prepared from the ganja seized on 26.01.2004 from the appellant were sent to the Forensic Science Laboratory, Raipur (Ex. P/18) mentioning Article A & B. The Forensic Science Laboratory, Raipur sent report on 17.03.2004 (Ex. P/21) confirming that the substance seized from possession of the appellant was ganja. After completion of investigation, the charge-sheet was submitted before the trial Court and the trial Court vide its judgment dated 12.09.2005, convicted and sentenced the appellant as mentioned in paragraph No. 1 of the judgment.

4. The prosecution, in order to bring home the guilt of appellant, has examined as many as 8 witnesses namely R. Ganpatrao (PW-1), Devendra Lachhaiya (PW-2), Vinay Kumar (PW-3), S.L. Manjhi (PW-4), Triyoginath Yadav (PW-5), I.R. Sahu (PW-6), K.L. Nand (PW-7) & Dr. M.P. Goutam (PW-8) and exhibited documents Ex. P/1 to P/27.
5. The accused was examined under Section 313 of the Cr.P.C. wherein she denied the charges levelled against her and pleaded innocence. Witnesses namely R. Ganpatrao (PW-1)/taul witness, Devendra Lachhaiya (PW-2)/search witness & Vinay Kumar (PW-3)/search witnesses, have turned hostile and have not supported the case of the prosecution and stated that no contraband was seized before them. Devendra Lachhaiya (PW-2) has admitted his signature in search memos, house search, identification panchnama & taul panchnama i.e. Ex. P/3 to P/6 respectively. The said witness has also stated that he has put his signature in seizure memo (Ex. P/7), map (Ex. P/8) and

notice (Ex. P/9) as well as arrest memo (Ex. P/10). Similarly, witness namely Vinay Kumar (PW-3) has also admitted his signature in Ex. P/2 to P/10.

6. S.L. Manjhi (PW-4)/Patwari was examined before the trial Court wherein he has stated that he prepared the map of the place of occurrence (Ex.P/12) in presence of the accused and as per the map, the house of the accused W/o Laxmaiah Reddy was constructed in the land admeasuring 12 ft. × 25 ft. In the cross-examination, he has stated that he did not know the accused or her house location before this and in Ex. P/11 the exact location of accused's house has not been mentioned. He has further stated that when he went to prepare the map, the accused was present and when he prepared the map, he was not aware that the accused was in jail. He has further stated that as per the record, no patta was granted by the Municipal Corporation in the name of Parvati alias Bhanumati's.
7. Triyoginath Yadav (PW-5)/Head Constable was examined before the trial Court wherein he has stated that in one jute bag, 9 kg. of cannabis with seeds and in one plastic bag 6 kg. of ganja leaves with seeds were found and 25-25 grams of two samples from each bag were prepared and the same were received by him for entering in the Malkhana Register (Ex. P/13).
8. I.R. Sahu/ Sub-Inspector (PW-6) In-charge of the Chowki Khursipar in his examination-in-chief has narrated the procedure adopted by him while conducting the search and seizure as well as sending the samples to Forensic Science Laboratory for chemical analysis. This witness was subjected to extensively cross-examination wherein he denied that contraband was found in abandoned condition, therefore,

the appellant has been implicated as accused. He has also denied that he has not shown the ganja to the witness as per Ex. P/6 and also remained affirmed that he has prepared 25 grams of two packets from each of the bags which were marked as Article A1 & A2 and also stated that he has sent one packet out of two packets of Article A1 & A2. He has also admitted that he has given four packets to maal moharrir and two bags were deposited. He has also admitted that before seizure, he was not aware that the contraband was found in the house of the appellant.

9. In further cross-examination with regard to seal, he has stated that seal packet Article A1 & A2 were sent but in the FSL form it has been mentioned as Article A & B and also admitted that Ex. P/18 is filled up by the office of Senior Superintendent of Police. He has also stated that he cannot give any provision why the number of articles has been changed and stated that Article A1 has been prepared from packet A and Article A2 has been prepared from packet B. He has denied that he never visited the spot, proceedings were conducted while sitting at the police station, signatures of witnesses were obtained later in the police station, or that he is giving false evidence.
10. Dr. M.P. Goutam (PW-8) who was working as Director, State Forensic Science Laboratory, Raipur has been examined before the trial Court wherein he has stated that the necessary physical, chemical & microscopic i.e. chromatographic tests of the received samples were conducted by them and found ganja on it. In the cross-examination, he has admitted that the test report (Ex. P/21) is prepared later, not at the time of testing and the observation is made on the basis of result obtained. He has further stated that if seeds and tops are separated,

they fall under category of seeds of cannabis plant, not under definition of ganja.

11. On the above factual matrix, learned counsel for the appellant would submit that the conviction imposed upon the appellant is unsustainable in law and facts. She would further submit that the prosecution has failed to establish that the ganja was recovered from conscious and exclusive possession of the appellant. She would further submit that the prosecution did not prove that the house from where the alleged seizure was made belongs to or was in the exclusive possession of the appellant. She would further submit that the prosecution case is based principally upon the testimony of statement of I.R. Sahu (PW-6), who was not only the complainant but also the Investigating Officer. She would further submit that since the independent witnesses have not supported the prosecution case, reliance upon the testimony of statement of I.R. Sahu (PW-6) alone is improper. She would further submit that the search was conducted in violation of the mandatory provisions of the NDPS Act as the house of a woman was searched without the assistance of any lady constable, therefore, the prosecution has failed to establish the chain of custody of the seized articles.
12. She would further submit that the person who allegedly carried the samples to the Forensic Science Laboratory was not examined before the trial Court, therefore, it remained unproved that the samples tested by the Forensic Science Laboratory were the same as those allegedly seized from the spot. She would further submit that the seizure memo mentions leaves, seeds and stems, therefore, the material seized did not satisfy the statutory definition of ganja and would pray for setting aside the conviction and sentence imposed upon the appellant. To

substantiate her submission, she would refer to the judgment rendered by Hon'ble the Supreme Court in case of **Sanjeev & another Vs. State of Himachal Pradesh [2022 LiveLaw (SC) 267]**, judgment rendered by High Court of Andhra Pradesh at Amaravati in case of **Killo Subbarao & others Vs. The State of Andhra Pradesh [APHC010254742025]** & judgment rendered by this Court in case of **Smt. Prakash Bai Shrivash Vs. State of Chhattisgarh [2026: CGHC: 10399]**.

13. Per contra, learned State counsel opposing the submission made by learned counsel for the appellant and supporting the impugned judgment of conviction and sentence would submit that the prosecution has established the seizure of contraband article ganja from the premises occupied by the appellant through reliable oral and documentary evidence. She would further submit that merely because independent witnesses turned hostile, the evidence of official witnesses does not become unreliable. The testimony of statement of I.R. Sahu (PW-6) remained consistent and there is no legal bar against a complainant acting as an Investigating Officer, particularly when no prejudice has been shown by the accused. She would further submit that the seized contraband article ganja was duly sealed, sampled and sent for chemical examination and the FSL report conclusively establishes that the seized substance was ganja and there is no evidence of tampering with the samples, therefore, the challenge to the chain of custody is without substance. She would further submit that no violation of any mandatory provision of the NDPS Act, has been established by the appellant and no prejudice shown to have been caused to the appellant by alleged non-compliance of the provision.

She would further submit that the prosecution has complied with all the mandatory provisions of the NDPS Act and would pray for dismissal of the instant appeal.

14. I have heard learned counsel for the parties and perused the documents placed on record with utmost circumspection.
15. Now this Court is examining the submissions made by learned counsel for the appellant.

Submission regarding conscious possession of the contraband

16. Learned counsel for the appellant would submit that the prosecution has failed to establish that the contraband was recovered from the conscious and exclusive possession of the appellant as no document with regard to title or ownership of the house has been placed on record by the prosecution, is being considered by this Court.
17. From the evidence of the prosecution witnesses, particularly Patwari (PW-4) who has prepared the map (Ex. P/12) wherein it has been mentioned that the said contraband was seized in presence of the appellant from her house and there is no allotment order in favour of the appellant which has not been rebutted by her, therefore, there is no necessity for the prosecution to place on record any document regarding title or ownership of the appellant. Further the evidence of Investigating Officer (PW-6) establishes that the contraband article ganja was recovered from the premises occupied by the appellant as PW-6 has denied in his cross-examination that ganja was found in abandoned condition and also stated that he has conducted the proceedings on the spot. The evidence recorded before the trial Court would clearly demonstrate that during house search, search panchnama (Ex. P/5) was prepared wherein it has been categorically

recorded that at the time of search in the kitchen, ganja in two jute bags were found and the appellant has put her thumb impression in search panchnama (Ex. P/5) which has not been rebutted by the defence despite extensive cross-examination. In absence of any evidence led by the defence that the said house was found in abandoned condition and does not belong to the appellant, as such the contraband article ganja may be kept by unknown person or the accused has been falsely implicated in the crime, the submission made by learned counsel for the appellant that the ganja was not found in conscious possession of the appellant, deserves to be rejected and accordingly, it is rejected.

18. PW-4/Patwari in his evidence has stated that as per the map, the house belongs to the appellant and the said map has been prepared in presence of the accused wherein at place B to B, the accused has put her signature. The said witness was cross-examined but nothing was brought on record to dilute the same. The record of the case would further demonstrate that the accused in her examination under Section 313 of the Cr.P.C. has also not taken any plea that the house does not fall within her conscious possession and no explanation has been given as to how the said contraband article ganja was found in the house which belongs to the appellant. Learned trial Court while examining the appellant under Section 313 of the Cr.P.C. has put question No. 2 that witness (PW-6) has stated that when he was on patrolling, he received secret information that in the house of the accused, illegal contraband article ganja has been kept, she simply replied, 'I don't know' and no contraband article ganja was found but there was no reply to the question regarding conscious possession of

the house. As such the submission made by learned counsel for the appellant that the contraband article ganja was not seized from conscious possession of the appellant, is misconceived and deserves to be rejected and accordingly, it is rejected.

19. Even otherwise as per Section 54 of the NDPS Act, in trial under this Act, it may be presumed that the accused has committed the offence under this Act in respect of any article prohibited to be possessed by him or her for possession of which he failed to establish that the contraband was seized from conscious possession of the accused, therefore, the learned trial Court is justify in drawing presumption that the accused was in conscious possession of the cannabis. Learned trial Court while recording the finding in paragraph 32 has categorically recorded that there is no contradiction or omission in the evidence of PW-6 regarding conscious possession of cannabis. The trial Court has also recorded its finding that the defence is unable to prove that PW-6 keep malice against the appellant and he has falsely implicated the accused. Thus, the finding of the trial Court regarding conscious possession, is legal, justified and in accordance with the law laid by Hon'ble the Supreme Court in case of **Rakesh Kumar Raghuvanshi Vs. State of Madhya Pradesh [2025 SC OnLine SC 122]** wherein it has been held in paragraphs 21 to 23 as under:-

“21. Conscious possession refers to a scenario where an individual not only physically possesses a narcotic drug or psychotropic substance but is also aware of its presence and nature. In other words, it requires both physical control and mental awareness. This concept has evolved primarily through judicial interpretation since the term “conscious possession” is not explicitly defined in the NDPS Act. This Court through various of its decisions has repeatedly underscored that possession under the NDPS Act should not only be physical but also conscious. Conscious possession implies that the person

knew that he had the illicit drug or psychotropic substance in his control and had the intent or knowledge of its illegal nature.

22. In Abdul Rashid Ibrahim Mansuri v. State of Gujarat reported in 2000 (2) SCC 513, this Court highlighted that once the prosecution proves physical possession, the burden shifts to the accused to explain how he came into possession of the contraband and prove that he was not aware of its presence or nature. The Court ruled that a person who admits that drugs were found in his possession must prove that he had no knowledge of the illicit nature of the substance.

23. In Madan Lal v. State of Himachal Pradesh reported in (2003) 7 SCC 465, this Court was dealing with a case where all the accused persons were travelling in a vehicle when they were nabbed and recoveries were made from them. The relevant extracts from the said judgment are set out below:

“19. Whether there was conscious possession has to be determined with reference to the factual backdrop. The facts which can be culled out from the evidence on record are that all the accused persons were travelling in a vehicle and as noted by the trial court they were known to each other and it has not been explained or shown as to how they travelled together from the same destination in a vehicle which was not a public vehicle.

20. Section 20(b) makes possession of contraband articles an offence. Section 20 appears in Chapter IV of the Act which relates to offences for possession of such articles. It is submitted that in order to make the possession illicit, there must be a conscious possession.””

Submission regarding search by a Lady Officer

20. The submission of learned counsel for the appellant that the appellant being woman must be searched by a lady officer as per Section 50 (4) of the NDPS Act, therefore, the entire search and seizure is bad in law, is being considered by this Court. To appreciate this submission, this Court has gone through the evidence and the material available on record. From perusal of Ex. P/3 & P/4, it is quite vivid that I.R. Sahu (PW-6) was searched by the accused and thereafter the house search memo (Ex. P/5) was prepared wherein the house was searched and identification panchnama (Ex. P/6) was prepared. Thus, it is quite vivid that no search with regard to appellant was conducted by any police

personnel whereas only house belongs to the appellant was searched. As such Section 50(4) of the NDPS Act, is not applicable to the present facts and circumstances of the case.

21. Learned counsel for the appellant has referred to the judgment rendered by the Coordinate Bench of this Court in case of **Smt. Prakash Bai Shrivash (supra)** which is not applicable to the present facts of this case as the Coordinate Bench of this Court has held that compliance of Section 50 of NDPS Act, is mandatory in case of personal search and failure of complying the same, may vitiate the conviction. It has also been held that Section 50 (4) of the NDPS Act provides specific procedure safeguard stating that no female accused shall be searched by anyone except a female which is not the situation in the present fact and circumstances of the case as the ganja was not found with the accused but it was found in the house, as such the accused was not subjected to personal search, therefore, the contention made by learned counsel for the appellant that in absence of search of a woman by a woman, vitiate the entire trial, is misconceived and deserves to be rejected and accordingly, it is rejected.

Submission regarding independent witnesses have not supported the case of the prosecution

22. Further submission made by learned counsel for the appellant that the independent witnesses did not support the prosecution case which may vitiate the trial, is being considered by this Court. It is well settled principle of law that the testimony of official witnesses cannot be discarded merely on the ground that they belong to police department, where such evidence is found trustworthy and reliable, conviction can

safely be based thereon. In the present case, the evidence of PW-6 is cogent, consistent and inspires confidence. Nothing substantial has been elicited in cross-examination to render his testimony unreliable merely on the ground that independent witnesses who turned hostile do not render the prosecution case doubtful. From appreciation of evidence brought on record by the prosecution particularly Investigating Officer (PW-6), it is quite vivid that the Investigating Officer has followed the procedure and proved its case which has not been rebutted by the defence. As such, the submission made by learned counsel for the appellant that the independent witnesses did not support the prosecution case which may vitiate the trial, deserves to be rejected and accordingly, it is rejected.

23. Hon'ble the Supreme Court in case of **Surinder Kumar Vs. State of Punjab [(2020) 2 SCC 563]** has held that evidence of official witness cannot be distrusted and disbelieved merely on account of their official status and has held in paragraphs 14 to 16 as under:-

“14. Further, it is contended by learned senior counsel appearing for the appellant that no independent witness was examined, despite the fact they were available. In this regard, it is to be noticed from the depositions of Devi Lal, Head Constable (PW-1), during the course of cross-examination, has stated that efforts were made to join independent witnesses, but none were available. The mere fact that the case of the prosecution is based on the evidence of official witnesses, does not mean that same should not be believed.

15. The judgment in the case of Jarnail Singh v. State of Punjab⁴, relied on by the counsel for the respondent-State also supports the case of the prosecution. In the aforesaid judgment, this Court has held that merely because prosecution did not examine any independent witness, would not necessarily lead to conclusion that accused was falsely implicated. The evidence of official witnesses cannot be distrusted and disbelieved, merely on account of their official status.

16. In State, Govt. of NCT of Delhi v. Sunil & Anr. it was held as

under:

“It is an archaic notion that actions of the Police Officer, should be approached with initial distrust. It is time now to start placing at least initial trust on the actions and the documents made by the Police. At any rate, the Courts cannot start with the presumption that the police records are untrustworthy. AS a presumption of law, the presumption would be the other way 6 (2001)1 SCC 652 round. The official acts of the Police have been regularly performed is a wise principle of presumption and recognized even by the Legislature”.

24. Again Hon'ble the Supreme Court in case of **Bharat Aambale Vs. State of Chhattisgarh [(2025) 8 SCC 452]** has examined this issue and has held in paragraphs 37 & 38 as under:-

“37. Thus, the prosecution sans the compliance of the procedure under Section 52A of the NDPS Act will not render itself helpless but can still prove the seizure or recovery of contraband by leading cogent evidence in this regard such as by examining the seizing officer, producing independent witnesses to the recovery, or presenting the original quantity of seized substances before the court. The evidentiary value of these materials is ultimately to be assessed and looked into by the court. The court should consider whether the evidence inspires confidence. The court should look into the totality of circumstances and the credibility of the witnesses, being mindful to be more cautious in their scrutiny where such procedure has been flouted. The cumulative effect of all evidence must be considered to determine whether the prosecution has successfully established the case beyond reasonable doubt as held in Noor Aga (supra).

38. Even in cases where there is non-compliance with the procedural requirements of Section 52A, it does not necessarily vitiate the trial or warrant an automatic acquittal. Courts have consistently held that procedural lapses must be viewed in the context of the overall evidence. If the prosecution can otherwise establish the chain of custody, corroborate the seizure with credible testimony, and prove its case beyond reasonable doubt, the mere non-compliance with Section 52A may not be fatal. The emphasis must be on substantive justice rather than procedural technicalities, and keeping in mind that the salutary objective of the NDPS Act is to curb the menace of drug trafficking.”

25. Learned counsel for the appellant would submit that PW-6 has acted as complainant and Investigating Officer both, is equally without merit as

the learned trial Court has dealt this issue and has held that search officer can conclude the investigation. Unless any prejudice is shown to have been caused to the accused or circumstances are demonstrated indicating a biased investigation, the investigation cannot be vitiated on this ground alone whereas no such prejudice has been established by the appellant in the present case.

**Submission regarding anomaly in affixing the seal creates doubt
regarding seizure of contraband**

26. Learned counsel for the appellant would submit that in the malkhana register (Ex. P/13), the samples were marked as Article A1 & A2 but when the prosecution sent the samples for chemical analysis vide Ex. P/18 on 28.01.2004, it has been mentioned as Article A & B which creates doubt that the alleged seized items from the appellant were sent for chemical analysis or not. From the records, it is quite vivid that in malkhana register (Ex. P/13), it has been mentioned that in one bag 9 kg. cannabis and in another bag 6 kg. cannabis were found out of which samples of 25 grams from each bag were prepared and marked as Article A1 & A2 but when the samples were sent vide Ex. P/18 from office of Senior Superintendent of Police, it has been clearly mentioned that the samples were derived from the bags seized from the appellant and were marked as Article A & B and the in the FSL report (Ex. P/21), it has been mentioned that in Article A & B, cannabis were found. This has been fortified by evidence of PW-6 who has clarified that in the FSL Form, Article A & B has been mentioned by the office of Senior Superintendent of Police and denied that he has not sent the samples seized for analysis which clearly establishes that the substance which has been seized from the appellant's house were sent for chemical

analysis.

27. Learned trial Court in paragraph 34 has recorded its finding that the Investigating Officer during investigation has mentioned samples as A1 & A2 which have been written by office of Superintendent of Police, does not have any adverse affect. This aspect of the matter regarding change of number/seal of the samples has come up for consideration before Hon'ble the Supreme Court in case of **Rizwan Khan Vs. State of Chhattisgarh [(2020) 9 SCC 627]** wherein it has been held in paragraph 15.2 as under:-

“15.2. It has been established and proved that the samples which were seized and sealed were sent to the FSL. From the record, it establishes that the recovery from Rizwan Khan was marked as ‘B1’ and ‘B2’ and the treasury record also that the narcotic substances recovered from Rizwan Khan were shown as ‘B1’ and ‘B2’. There seems to be some clerical error in numbering of sample in memorandum of Superintendent of Police and the same was mentioned as ‘A1’. However, it has been established and proved that the samples which were seized and sealed from Rizwan were sent to the FSL. The aforesaid aspect has been dealt with by the learned Special Court in its judgment in paragraphs 25 and 26.”

28. Therefore, the submission made by learned counsel for the appellant that the anomaly in affixing the seal creates doubt regarding seizure of contraband article, deserves to be rejected and accordingly, it is rejected.

Submission regarding dispute about seized item

29. Further submission of learned counsel for the appellant that as per Section 2 (iii) of the NDPS Act, ganja means flowering of fruiting tops of the cannabis plant (excluding the seeds, leaves when not accompanied by the tops) by whatever names they may be known or designated then only the appellant can be prosecuted under the NDPS

Act whereas from the seizure memo and evidence of Dr. M.P. Goutam (PW-8), it is not clear that ganja was seized from the appellant, is being considered by this Court. PW-8 has stated that if seeds and tops are separated, they fall under category of seeds of cannabis plant, not under definition of ganja and from perusal of the report (Ex. P/21), it is quite vivid that the ganja has been found which is supported by the seizure memo (Ex. P/2) and register of malkhana (Ex. P/13) wherein it has been mentioned that ganja with leaves and seeds admeasuring 9 kg. in one bag and in another bag, ganja with leaves and seeds of 6 kg. were found, as such it is proved beyond reasonable doubt that Packet A & B consists of ganja. As such, the submission made by learned counsel for the appellant regarding doubt over seizure of ganja from the house of the appellant is unfounded and accordingly, it is rejected.

Submission regarding reduction of sentence to the period already undergone by the accused

30. Learned counsel for the appellant would pray for reducing the sentence to the period already undergone by the appellant as she remained in incarceration for 9 months during trial and during pendency of this appeal, is being considered by this Court. From the records, it is quite vivid that 15 kg. of ganja were seized from possession of the appellant which is more than small quantity and less than commercial quantity as per the Schedule annexed with the NDPS Act whereas Section 20 (B) of the NDPS Act provides that the quantity lesser than the commercial quantity but greater than small quantity, rigorous imprisonment can be imposed which may extend to 10 years and with fine whereas in the present case, she has been convicted for 4 years which is punishable

for the offence for less than commercial quantity.

31. Hon'ble the Supreme Court in case of **Rizwan Khan (supra)** has considered the prayer for reducing the sentence to the period undergone by the accused in case of NDPS Act and has held in paragraphs 18 & 19 as under:-

“18. Now so far as the prayer on behalf of the accused to take a lenient view and to impose the lesser punishment than the sentence imposed by the learned Special Court, confirmed by the High Court, is concerned, considering the object and purpose of the enactment of the NDPS Act and the fact that the sentence provided under the Act for the offence in question is rigorous imprisonment for a term which may extend to 10 years and with fine which may extend to one lakh rupees and the Court has imposed sentence of five years rigorous imprisonment only, the prayer to take a lenient view is rejected as the learned Special Court itself has taken a lenient view.

19. In view of the above and for the reasons stated above, we are of the firm view that both the courts below have rightly convicted the accused for the offence under Section 20(b)(ii)(B) of the NDPS Act. We are in complete agreement with the findings recorded by the learned Special Court and confirmed by the High Court and the conviction recorded by both the courts below. We see no reason to interfere with the conviction of the accused for the offence under Section 20(b)(ii)(B) of the NDPS Act.”

32. Considering the serious concern about the problem of drug addicts and mafia at the national and international level, this Court has to consider that the provisions of NDPS Act are required to be interpreted keeping in mind the object and purpose of the said Act and the impact on the society as a whole and the Act is required to be interpreted literally and not liberally which may ultimately frustrate the object, purpose and Preamble of the Act. This Court cannot lose sight of the fact that the problem of drug addicts and mafia are working throughout the world and it is a crime against the society, as such, it has to be dealt with iron hands. Use of drugs by the young people in India has increased. The

drugs are being used for weakening of the nation.

33. Taking into consideration the law on the subject and also the gravity of the offence committed by the appellant, the prayer made by learned counsel for the appellant that the sentence imposed by the trial Court may be reduced to the period already undergone by the appellant, deserves to be rejected and accordingly, it is rejected. Even otherwise, while convicting the accused, the trial Court has taken a lenient view by sentencing her for four years which is sufficient and adequate to the offence committed by the appellant, therefore, this Court is of the considered opinion that the prayer for reducing the sentence to the period already undergone by the appellant, deserves to be rejected and accordingly, it is rejected. Thus, the conviction and sentence imposed upon the appellant are fully justified which does not call for any interference by this Court.
34. The trial Court has discussed the evidence in detail and has assigned cogent reasons for accepting the prosecution case. The findings recorded by the trial Court are based on proper appreciation of oral and documentary evidence and do not suffer from any illegality, perversity or material irregularity warranting interference by this Court in appellate jurisdiction.
35. Accordingly, the criminal appeal being devoid of merit is liable to be and is hereby dismissed. The judgment of conviction and order of sentence passed by the learned trial Court are hereby affirmed.
36. It is reported that the appellant is on bail and her bail bonds are cancelled. She is directed to surrender before the concerned trial Court on **30th September, 2026** for serving out the remaining part of sentence as awarded to her by the trial Court. The appellant is entitled

to set off as under Section 428 (2) of the Cr.P.C. or Section 468 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

37. It is made clear that if the appellant fails to surrender before the concerned trial Court on the aforesaid date, the trial Court shall take necessary steps against her and compliance report thereof be sent to this Court.

Sd/-
(Narendra Kumar Vyas)
Judge

Arun