



2026:CGHC:3942



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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1382 of 2017

1 - Homsai S/o Buddhu Ram Kanwar, Aged About 30 Years Occupation Cultivator, R/o Majira, Police Station Jaynagar, District Surajpur, Chhattisgarh., Chhattisgarh

2 - Anand Paikra S/o Bhogal Ram Kanwar, Aged About 50 Years Occupation Cultivator, R/o Majira, Police Station Jaynagar, District Surajpur, Chhattisgarh., District : Surajpur, Chhattisgarh

... Appellant(s)

versus

1 - State Of Chhattisgarh Through The Station House Officer, Police Station Pratappur, District Surajpur, Chhattisgarh., Chhattisgarh

... Respondent(s)

For Appellant(s)	:	Shri Mahendra Dubey, Advocate
For Respondent/State	:	Shri Vivek Mishra, PL

(Hon'ble Shri Justice Arvind Kumar Verma)

Judgment on Board

22/01/2026

This criminal appeal has been preferred under Section 374(2) of



the Code of Criminal Procedure, 1973, by the appellants assailing the judgment of conviction and order of sentence dated 13.07.2017 passed by the learned Special Judge (NDPS Act), Surajpur, in Special Case No. CGSJ010000632014, whereby the appellants were convicted for the offence punishable under Section 22(b)(ii)(B) read with Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as “the NDPS Act”) and sentenced to undergo rigorous imprisonment for five years with fine of Rs. 20,000/- each, and in default of payment of fine, to further undergo rigorous imprisonment for six months.

2. When the matter was called out today, none appeared on behalf of the appellants. In the circumstances, this Court deems it appropriate to proceed with the hearing of the appeal by appointing a counsel through the High Court Legal Services Committee.

3. Accordingly, Shri Mahendra Dubey, Advocate, empanelled Legal Aid Counsel, is appointed to represent the appellants and to argue the appeal on their behalf. The Secretary, High Court Legal Services Committee, is directed to issue the requisite authorization letter in his favour.

4. This Court has perused the judgment under appeal, the depositions of the prosecution witnesses and the documentary evidence on record, with the assistance of the learned Legal Aid Counsel and the learned State Counsel. In view of the law laid down by the Supreme Court in ***Surya Baksh Singh v. State of Uttar Pradesh, (2014) 14***



SCC 222, this Court does not find it necessary to adjourn the matter or to issue fresh notice to the appellants, as his interests have been adequately safeguarded by the appointment of a Legal Aid Counsel.

5. The prosecution case, in nutshell, is that on 15.07.2014 at about 12:10 hours, Assistant Sub-Inspector Pramod Kumar Pandey, Police Station Pratappur, District Surajpur, received secret information that two persons were carrying narcotic substance (ganja) on a motorcycle bearing registration No. CG-15-ZJ-3500 from Ambikapur side towards Bojha. The said information was reduced into writing in the Rojnamcha Sanha and Mukhabir Panchanama was prepared. A copy of the information was forwarded to superior officers as required under law.

Since obtaining a search warrant could have caused delay and there was likelihood of the suspects fleeing away or destroying evidence, the police party proceeded to the spot along with independent witnesses. The appellants were intercepted near the spot. They were informed of their legal right under Section 50 of the NDPS Act that they could be searched in the presence of a Gazetted Officer or a Magistrate. The appellants voluntarily consented to be searched by the police officers present on the spot, which consent was recorded in writing and panchnama was prepared.

6. Thereafter, search of the appellants and the motorcycle was conducted. From the possession of appellant Homsai Paikra, a detergent powder bag containing contraband substance was recovered. On examination, the substance was found to be ganja. The contraband



was weighed with the help of an independent witness, in the presence of witnesses, and the total weight was found to be 2 kilograms 100 grams. Out of the recovered contraband, 100 grams of ganja was separated as sample for chemical examination. The remaining contraband was sealed and seized as per procedure. Seizure memo and related panchnamas were prepared. The seized contraband was deposited in the Malkhana and entries were made in the relevant register. Samples were sent to the Forensic Science Laboratory, which confirmed that the seized substance was ganja. The appellants were arrested and information regarding their arrest was given to their relatives. After completion of investigation, charge-sheet was filed before the learned Trial Court.

7. During trial, the prosecution examined ten witnesses. The independent witnesses did not support the prosecution case and were declared hostile. The statements of the appellants were recorded under Section 313 of Cr.P.C., wherein they denied the allegations and pleaded false implication. After appreciating the evidence on record, the learned Trial Court convicted and sentenced the appellants as aforesaid.

8. Learned counsel for the appellants, while assailing the impugned judgment of conviction and order of sentence, has advanced elaborate submissions both on facts and law. It was contended that the learned Trial Court has failed to appreciate the evidence on record in its correct perspective and has recorded conviction on surmises and conjectures, ignoring material contradictions, procedural lapses and infirmities in the



prosecution case.

9. Learned counsel for the appellants submits that the entire prosecution case rests upon the alleged secret information received by PW-9 Pramod Kumar Pandey, Assistant Sub-Inspector, on 15.07.2014, regarding transportation of ganja by the appellants on a motorcycle. However, it was argued that the prosecution has failed to establish strict compliance of mandatory provisions of the NDPS Act at the very inception of the case. It was contended that although PW-9 ASI has claimed that the secret information was recorded in the Rojnamcha Sanha and Mukhbir Panchanama, the prosecution failed to produce any independent corroboration of the said information. The alleged Mukhabir Panchanama and Rojnamcha entries (Exhibits P/1 and P/2) were not proved in accordance with law, thereby rendering the very foundation of the prosecution case doubtful.

10. Learned counsel for the appellants vehemently argued that the mandatory requirement of Section 50 of the NDPS Act was not complied with in its true spirit. Though the prosecution alleged that the appellants were informed of their right to be searched before a Gazetted Officer or Magistrate, the evidence on record does not establish that such right was meaningfully and effectively communicated. It was submitted that PW-9 Pramod Kumar Pandey has stated that the appellants had given their consent and it was recorded in writing. However, the consent panchnama (Exhibit P/9 and P/10) does not reflect that the appellants were made aware that it was their legal right



and not a mere formality. The language of the consent memo is stereotyped and mechanical, which casts serious doubt on its genuineness.

11. Learned counsel further submitted that PW-1 and PW-2, the independent witnesses to the search and seizure, did not support the prosecution case and categorically stated that they had merely signed on blank papers at the instance of police. Thus, the alleged compliance of Section 50 of the NDPS Act becomes highly doubtful.

12. He further emphasized that the independent witnesses to the search and seizure, namely PW-1 Ramanath Rajwade and PW-2 Ramdev Rajwade, turned hostile and did not support the prosecution case. PW-1 Ramanath Rajwade deposed that he did not witness the search or recovery and had signed the documents at the police station. Similarly, PW-2 Ramdev Rajwade stated that he was unaware of the contents of the documents and had signed the seizure memo at the instance of police. It was argued that the testimony of these independent witnesses demolishes the prosecution version regarding search, seizure and recovery. In the absence of reliable independent corroboration, the conviction based solely on official witnesses is unsafe.

13. Learned counsel for the appellants submitted that there are material contradictions in the testimony of official witnesses, which strike at the root of the prosecution case. PW-9 Pramod Kumar Pandey, the Investigating Officer, stated that the contraband was recovered from a



detergent powder bag carried by appellant Homsai Paikra. However, PW-3 and PW-4 gave inconsistent versions regarding the place of recovery and the manner of search. It was further contended that the prosecution witnesses gave contradictory statements regarding:

- (i) the exact time of interception of the appellants;
- (ii) the place where the search was conducted;
- (iii) the presence of independent witnesses;
- (iv) the weighing of contraband;
- (v) the sealing and sampling process.

These contradictions, according to learned counsel for the appellants, create serious doubt about the genuineness of the alleged recovery.

14. Learned counsel for the appellants argued that the prosecution failed to prove conscious and exclusive possession of the contraband by the appellants. The prosecution alleged joint possession, but no specific role or possession was attributed individually to the appellants. The motorcycle was not proved to belong to the appellants, nor was any evidence led to show their conscious control over the alleged contraband. In absence of proof of conscious possession, the conviction under the NDPS Act cannot be sustained.

15. It is further contended that though PW-9 claimed that samples were drawn on the spot and sealed, the prosecution failed to prove the exact number of seals used; the seal impression; safe custody of the seized material in Malkhana; the date and time of dispatch of samples to FSL; the condition of seals at the time of receipt by FSL.



16. The Malkhana register entries and forwarding letter (Exhibits P/24, P/40, P/45) were not proved in accordance with law. Learned counsel for the appellants submitted that any doubt regarding the integrity of the seized material vitiates the prosecution case under the NDPS Act. It was contended that the independent witnesses of weighment did not fully support the prosecution case. The alleged weighing of contraband was not proved beyond doubt. The prosecution claimed that the contraband weighed 2 kg 100 grams, out of which 100 grams was taken as sample. However, the weighing process was not proved through reliable evidence. The discrepancies in weight mentioned in different documents further create doubt regarding the authenticity of the alleged recovery.

17. It is submitted that there was unexplained delay in registration of FIR and forwarding of documents to superior officers. PW- 9 (ASI) has admitted in his cross-examination that the FIR was registered after completion of several procedural formalities, which creates suspicion of manipulation of documents. It was argued that the investigation was conducted in a casual and mechanical manner, thereby rendering the prosecution case doubtful and in cases under the NDPS Act, strict compliance of statutory safeguards is mandatory and any deviation therefrom vitiates the conviction.

18. It was argued that the learned Trial Court failed to appreciate that the prosecution must prove its case beyond reasonable doubt and the burden cannot be shifted upon the accused merely on the basis of



official testimony. In view of the infirmities and contradictions in the prosecution case, the appellants are entitled to benefit of doubt. Lastly, it is submitted that even if the conviction is upheld, the appellants deserve leniency in the matter of sentence, considering that the quantity of contraband is less than commercial quantity; the appellants are first-time offenders; they have already undergone substantial period of incarceration; the incident is of the year 2014 and the appellants have suffered the ordeal of criminal proceedings for more than a decade.

19. On the aforesaid grounds, learned counsel prayed that the impugned judgment of conviction be set aside and the appellants be acquitted. Alternatively, the sentence imposed upon the appellants be reduced to the period already undergone.

20. Learned counsel for the State supported the impugned judgment and submitted that the conviction recorded by the Trial Court is based on proper appreciation of evidence and does not warrant interference. It was further submitted that the offence under the NDPS Act is serious in nature and therefore, the appellants do not deserve undue leniency. However, it was fairly conceded that the quantity involved is not commercial and the appellants have already undergone a considerable period of sentence.

21. The following points arise for consideration:

- (i) Whether the conviction of the appellants under Section 22(b)(ii)(B) read with Section 29 of the NDPS Act calls for interference?
- (ii) Whether the sentence imposed upon the appellants deserves



modification?

As noted above, the appellants have not challenged the conviction on merits and have confined their submissions only to the question of sentence.

22. Even otherwise, on careful scrutiny of the record, this Court finds that the prosecution has established the recovery of ganja from the possession of the appellants beyond reasonable doubt. The compliance of mandatory provisions of the NDPS Act, particularly Section 50, has been duly proved. The search and seizure were conducted in accordance with law. The chain of custody of the seized contraband has been properly established through documentary and oral evidence. Though the independent witnesses have turned hostile, the evidence of official witnesses cannot be discarded merely on that ground, when their testimony is otherwise reliable and trustworthy. The FSL report conclusively establishes that the seized substance was ganja. The Trial Court has rightly appreciated the evidence and recorded conviction based on cogent and convincing material.

23. Thus, this Court finds no illegality, perversity or infirmity in the findings recorded by the learned Trial Court. Accordingly, the conviction of the appellants under Section 22(b)(ii)(B) read with Section 29 of the NDPS Act is affirmed.

24. Coming to the question of sentence, it is to be noted that the quantity of contraband recovered in the present case is less than commercial quantity. The appellants are stated to be first-time offenders and there is no material on record to show that they are habitual



offenders. The appellants have already undergone a considerable period of incarceration during investigation, trial and after conviction. It is a settled principle of law that while awarding sentence, the Court must balance the gravity of the offence with the mitigating circumstances of the accused.

25. Considering the totality of facts and circumstances of the case, including the nature of offence, quantity of contraband, period of incarceration already undergone by the appellants, and absence of criminal antecedents, this Court is of the considered view that the ends of justice would be met if the sentence imposed upon the appellants is reduced to the period already undergone by them. Consequently, the appeal is partly allowed.

26. The conviction of the appellants for the offence punishable under Section 22(b)(ii)(B) read with Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, as recorded by the learned Trial Court, is hereby maintained. However, so far as the sentence is concerned, it is noticed that the appellants have remained in custody for a period of more than three years and have already undergone a substantial part of the sentence imposed upon them. Having regard to the nature of offence, the quantity of contraband involved, the period of incarceration already undergone by the appellants, and the overall facts and circumstances of the case, this Court is of the considered opinion that the ends of justice would be met if the sentence awarded to the appellants is reduced to the period already undergone by them.



27. The fine imposed by the Trial Court shall remain intact. In case the appellants have not deposited the fine amount, they shall deposit the same within a period of four weeks from today, failing which they shall undergo the default sentence as directed by the Trial Court.

28. Since the appellants are reported to be on bail, their bail bonds and surety bonds shall stand discharged, subject to deposit/payment of the fine amount, if not already deposited.

29. The appellants shall comply with the provisions of Section 437-A of the Code of Criminal Procedure and furnish the requisite bonds before the learned trial Court within the stipulated period.

Sd/-

(Arvind Kumar Verma)
Judge