



2025:CGHC:31385

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 187 of 2023

1. Dharmendra Rai S/o Bhagdev, Aged About 30 Years Resident Randhava, P.S. Rajpaker, District Baishali, Bihar.
2. Nandkishore Gupta S/o Panchanand Gupta Aged About 31 Years Resident Rampur, P.S. and District Vashali Bihar

... Appellants

versus

State Of Chhattisgarh Through P.S. Nagarnar, District Bastar (Chhattisgarh)

... Respondent

For Appellants	: Ms. Aparajita Gaikwad, Advocate.
For Respondent(s)	: Ms. Ankita Shukla, Panel Lawyer.

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Hon'ble Mr. Ramesh Sinha, Chief Justice

Judgment on Board

08.07.2025

1. The matter has been listed today for the appearance of the appellant No.1, namely, Dharmendra Rai, who has not appeared before this Court. In compliance of the order dated 10.06.2025, an affidavit has been filed by the Director General of Police, Chhattisgarh, wherein he has stated that after being released on bail, the appellant No. 1 has committed another offence under the NDPS Act, bearing Crime No. 521/2023, registered at Police Station – Jaithari, District – Anuppur (M.P.) and the appellant No. 1 is in jail in the said case. So far as the appellant No. 2 is concerned, it is stated that he is on bail.

2. As the case is of the year 2023 and out of 10 years, both the appellants have undergone 6 years and 9 months in jail. Hence, with the consent of the parties, this Court proceeds to dispose of the matter on merits.
3. The appellants have preferred this appeal under Section 374(2) of Code of Criminal Procedure, 1973 (for short, 'CrPC') questioning the impugned judgment dated 01.12.2022 passed by the learned Special Judge (N.D.P.S. Act), 1985, Jagdalpur, District – Bastar (C.G.) in Special Criminal Case (NDPS Act 1985) No. 07/2017, whereby the learned Special Judge after holding the appellants guilty for the offence punishable under Section 20(B)(ii)(C) of the Narcotic Drug and Psychotropic Substance Act, 1985 (hereinafter refereed to as 'the Act') and sentenced them to undergo R.I. for 10 years and to pay fine of Rs. 1,00,000/- each, in default of payment of fine to further undergo R.I. for 1 year.
4. Case of the prosecution, in brief, is that on 13.04.2016, at 04:00 PM, Inspector Mr. Durgesh Sharma (PW-14) of Nagarnar Police Station received information from an informer that a white Tata RX pickup bearing registration number BR/06-GA/9739 was coming to Jagdalpur from Odisha in which illegal drug like ganja was being transported. On the basis of the information, the police left for the crime scene. After completing all the proceedings under the NDPS Act, a case was registered on the spot under Section 20 (b) of the NDPS Act under the Rural Nalisi, on the basis of which a crime was registered in the police station as per the First Information Report number 63/2016. The above information was recorded in the diary and after informing the senior officers through phone, informer information panchnama, information about receipt of crime information, panchnama about not being able to

obtain search warrant was prepared and sent through special post to CSP office Jagdalpur through Constable Kailash Bhaskar and Constable number 540 Mangal Sethia was sent with duty certificate to summon two independent witnesses. Constable number- 540 Mangal Sethia brought two independent witnesses- Balram and Bhagat and after informing them about the informer information, they were told to be present in the NDPS proceedings to be conducted with the police and to agree as witnesses and written consent was obtained by giving notice under Section 160 CrPC. Thereafter, on the instructions of senior officers, with the investigation kit of NDPS Act, independent witness and staff, a blockade was done at the incident spot, Chokawada Chowk, and vehicle bearing registration No. BR/06/GA/9739 was stopped in which two persons were sitting as per the description given by the informant, out of which Dharmendra Rai was sitting on the driver's seat and the person sitting on the seat next to the driver told his name to be Nandkishore.

5. The prosecution case further states that the accused were informed about their legal rights by giving them notice under Section 50 of NDPS Act regarding the search. On search, 20 empty vegetable crates kept in the container of the vehicle and 40 packets wrapped in brown cello tape were found in the chamber inside the container, which contained illegal drug ganja. When a search panchnama was prepared and notice was given to the suspect, he did not produce any documents in this regard, and a total of 120 kg of ganja packed in 40 packets from his possession was recovered and a recovery panchnama was prepared in front of witnesses. Thus, when the accused together expressed their desire to keep ganja in their possession in more than commercial quantity and did not produce valid and relevant documents/licenses regarding transportation, 120 kg of prohibited ganja packed in 40 packets was seized as above.

- 6.** During the investigation, the crime scene was inspected and a site map was prepared, inventory proceedings of the seized narcotic substance ganja were conducted and FSL test was done, Patwari map was prepared. Statements of necessary witnesses were recorded and on returning to the police station, a numbered crime was registered. Thus, on the basis of the entire investigation of the case, proceedings under NDPS Act, statements of witnesses and all the evidence collected, the accused were found to have committed the crime, so after the completion of the investigation, a charge-sheet was presented before the Court against the accused under Section 20 (b) NDPS Act.
- 7.** After recording the statement of the witnesses under Section 161 of the Code of Criminal Procedure, 1973 and after completion of investigation, charge sheet was filed in the Court of the Special Judge (N.D.P.S. Act), Jagdalpur (C.G.).
- 8.** During examination of the accused under Section 313 CrPC, they stated that they were innocent and that they had been falsely implicated and no witness was produced in their defence.
- 9.** In order to prove the guilt of the appellant/accused, the prosecution has examined as many as 14 witnesses and exhibited 56 documents in support of its case. Statement of the accused/appellants were recorded under Section 313 of the Code of Criminal Procedure, 1973, in which they denied the circumstances appearing against them and pleaded innocence and false implication in the case.
- 10.** Learned Special Judge after affording an opportunity of hearing to the parties, convicted and sentenced the accused/appellants as aforementioned.

- 11.** Learned counsel for the appellants submits that the prosecution utterly failed to prove conscious possession of contraband article and in the absence of conscious possession, the accused are entitled for acquittal. She further submits that the independent witnesses have not supported that the contraband article was seized from the possession of the appellants. The learned trial Court failed to appreciate that there are major contradictions and omission occurred in the statement of prosecution statements. This apart, the prosecution has failed to examine the seizure witnesses during the course of trial. Further, the appellants have already served 6 years and 9 months of jail sentence out of 10 years of jail sentence as has been awarded by learned trial Court, therefore, the sentence already undergone by them may be suffice to meet the ends of justice.
- 12.** On the other hand, judgment impugned is supported on behalf of the respondent/State and submits that conscious possession of the appellants have been established by the prosecution by adducing evidence. The prosecution has complied with the provisions of Special Act and conviction and sentence is sustainable under the law.
- 13.** I have heard learned counsel for the parties, perused the impugned judgment and records of the trial Court.
- 14.** In order to establish the complicity of the accused/appellants in the crime in question, the prosecution has examined Mr. Durgesh Sharma (PW-14), Inspector, who is the Investigating Officer of the case has categorically deposed that on the incident date 13/04/2016 at 04.00 a.m., information was received from an informer that a white colour Tata RX Pickup bearing registration No. BR/06-GA/9739 is coming from Odisha towards Jagdalpur, in which illegal narcotic substance ganja is being

transported. On receiving the above information, diary Sanha No. 05, Exhibit P/45 was registered and senior officers were informed and on the said date at 6.30 o'clock, in front of witnesses, informer information panchanama was prepared as per Exhibit P/09 and on the said date at 6.45 o'clock, he sent all the information to CSP office Jagdalpur through postal Constable Kailash Bhaskar, regarding whose dispatch there is diary Sanha No. 13 Exhibit P/49, who returned and reported his arrival at the police station, regarding which diary Sanha No. 17, time 9.30 o'clock Exhibit P/50 was registered. On the said date at 4.30 o'clock in the morning, panchanama of information about receipt of crime Exhibit P/47 and panchanama of not being able to obtain warrant Exhibit P/48 were prepared.

15. Mr. Suresh Dhruv (PW-10), Sub Inspector along with the Investigating Officer and other staff Mangalram Sethia (PW-06), Sandeep Markam, Jagdish Kashyap and witnesses Balram Baghel (PW-04) and Bhagatram Baghel (PW-05) left for the place of occurrence Chokawada National Highway No. 63 where they blocked the road. After some time a white coloured pick up vehicle from Odisha bearing registration number BR 06/GA/9739 reached the spot which was stopped and verified. The driver told his name to be Dharmendra Roy/appellant No.1 and the person sitting next to the driver told his name to be Nandkishore Gupta/appellant No.2. On searching the said vehicle by the officer In Charge/Investigating Officer on the spot, 40 packets wrapped in cello tape were recovered from a chamber like slot in the pick up vehicle in the possession of the accused. Panchnama of the same was prepared. On identification and weighing, it was found to be 120 kg. It has also been informed that after due proceedings at the scene of incident, they returned to Nagarnar Police Station with the recovered illicit narcotic

substance, ganja, vehicle along with the accused.

- 16.** Mr. Durgesh Sharma (PW-14) Investigating Officer has stated that he prepared informer information panchanama Exhibit P-09, informer information verification panchanama Exhibit P-10 at the scene of incident. He has also certified the seizure of total 120 kg ganja and vehicle pickup number- BR/06-GA/9739 and the seizure of the drug vehicle and other documents on the same date at 14.30 pm as per seizure memo Exhibit P-22. The said witness has stated in clause-20 that on the date of incident at 15.15 pm at the scene of incident in front of witnesses, after weighing the illegal drug ganja packed in 40 packets recovered from the vehicle in the possession of the accused, and a sample seal was prepared as per panchanama Exhibit P-23. Thus, it is clear that no such important fact has come to light in the cross-examination of the Investigating Officer which may raise doubts in the seizure action taken by him. Hence, the seizure of 120 kg ganja from the possession of the accused is proved.
- 17.** Now coming to the FSL Report i.e. Exhibit P-56, on 31.05.2016, a sealed packed marked as A-1 containing greenish-brown colored leaves, seeds and dry plant material containing inflorescence. The said sample was subjected to necessary physical, chemical, microscopic, and TLC tests, which yielded positive results for ganja. No challenge of any kind has been given by the defense to the FSL report of FSL Raipur, Exhibit P-56.
- 18.** After appreciating the evidence available on record, the statement of Investigating Officer Mr. Durgesh Sharma (PW-14), Sub Inspector Mr. Suresh Dhruv(PW-10), other prosecution witnesses and the documents available on records, particularly, and the FSL report (Ex.P-56), the learned Special Judge has arrived at a finding that the

appellants were found in possession of 120 Kgs. of contraband articles (Ganja), further, the appellants have failed to give plausible explanation with respect to the huge recovery of the contraband article which were recovered from their possession and thus, they were convicted and sentenced as aforementioned.

19. Considering the evidence available on record, and the findings recorded by the learned trial Court as discussed above, the appellants have rightly been convicted and sentenced by the trial Court as aforementioned. I do not find any scope for interference in the judgment impugned. Consequently, the appeal is liable to be and is hereby **dismissed**.
20. As the appellant No.2 – **Nandkishore Gupta**, is stated to be on bail. His bail bonds are cancelled and sureties discharged. He shall surrender forthwith before the concerned trial Court for serving remaining sentence as awarded by the trial Court, failing which he shall be taken into custody by the trial Court.
21. Registry is directed to send a certified copy of this judgment along with the original record of the case to the trial Court concerned forthwith for necessary information and compliance and the appellants are at liberty to assail the present judgment passed by this Court by preferring an appeal before the Hon'ble Supreme Court with the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee.

Sd/-
(Ramesh Sinha)
Chief Justice