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2026:CGHC:9378

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1543 of 2017

1 - Gajendra Kushwaha @ Gullu S/o Late Ram Bharos Kushwaha, Aged About 38 Years R/o Salka, Police Station Bhatgaon, District Surajpur Chhattisgarh , Chhattisgarh

... Appellant

versus

1 - State Of Chhattisgarh Through Police Station Police Station Bhatgaon, District Surajpur Chhattisgarh , Chhattisgarh

... Respondent

For Appellant	:	Mr. Rishi Sahu, Advocate
For State /Respondent	:	Dr. Surendra Dewangan, Panel Lawyer

(Hon'ble Shri Justice Arvind Kumar Verma)

Judgment on Board

23/02/2026

1. With the consent of the counsel for both the parties, the matter is heard finally.
2. This criminal appeal is preferred by the appellant under Section 374 (2) of the Code of Criminal Procedure is directed against the impugned judgment dated 21.09.2017 passed by the Special Judge (Under NDPS Act, 1985), Surajpur, District-Surajpur, C.G. in CNR

No.CGSJ010000902013 whereby the appellant has been convicted and sentenced as under:-

Conviction	Sentence
Under Section 20(b) (ii)(B) of Narcotic Drug and Psychotropic Substances Act, 1985.	R.I. for 5 years and fine of Rs.20,000/- and in default of payment of fine 6 months additional R.I.

3. The case of the prosecution, in brief, is that on 7.02.2012, Assistant Sub-Inspector Vimlesh Singh (PW-07), In-charge of Police Station - Bhatgaon, received information from an informant that Gajendra Kushwaha, alias Gullu, a resident of Village Salka, was carrying a bag containing narcotic substance Ganja and traveling from Salka to Bhatgaon for its sale. He recorded the information in the daily register/Rozanamcha Sanha and summoned the office staff Tarun Rai (PW-2) and Ravindra Kumar Vishwakarma (PW-3) from the police station. He informed them of the information and prepared an Informant Information Panchnama (Ex.P/2). He forwarded the information and Panchnama to the SDO(P), Pratappur through Puran Rajwada (Constable) for further action and instructions. Verifying the information and obtaining a search warrant would likely take time, and the accused was likely to dispose of the narcotic substance and escape. Without obtaining a search warrant, he himself went to the spot. Taking along with the witnesses and Crime Branch In-charge C.P. Tiwari, Crime Branch PR 202 Madhav Singh, No. 685 Lalan Singh, No. 785 Vikas Patel, No. 66 Varun Tiwari, No. 51 Amresh Singh, No. 304 Sita Ram

Paikra, No. 84 Akshay Chaurasia and necessary material and documents, he left for the spot to verify the information received from the informer. When Assistant Sub-Inspector Vimlesh Singh reached the place indicated by the informant, a man was seen coming from Salka shortly after, carrying a bag. Seeing the police force, he tried to run away. When he was apprehended and questioned in front of witnesses and staff, the suspect revealed his name to be Gajendra Kushwaha alias Gullu. He served a notice to the suspect under Section 50 of the NDPS Act, explaining the reasons for his search and informing him about his rights to search, that he could have his own search conducted by a magistrate or a gazetted officer. The suspect consented to the search, and a consent Panchnama was prepared. Thereafter, before the search, the police force and witnesses were searched by the accused, in respect of which Search Panchnama (Ex.P/4) was prepared. He then searched the accused's body and found the narcotic substance Ganja in two plastic polythene bags inside the accused's possession. The narcotic substance Ganja was recovered from the suspect, and a search and Seizure Panchnama (Ex.P/5) was prepared. He had witnesses identify the substance recovered from the suspect by touching it, rubbing it with a needle, and burning a small portion. The witnesses determined it to be Ganja. Based on his extensive experience in the department and the training he received, he also examined the substance by touching, smelling it, rubbing it, and burning a small portion, which revealed it to be

contraband-Ganja. In this regard, he prepared an identification Panchnama (Ex.P/6). He opened the plastic packets and mixed them together, and prepared a Sampling Memorandum/Panchnama (Ex.P/7). He served a notice to a person namely Sarfullauddin (P.W.5), summoning him to appear at the scene with a weighing scale, and served it to a constable. Sarfullauddin (P.W.5) appeared at the scene with a weighing scale. Physical verification (Ex.P/8) of the same was conducted in front of witnesses and a Weighing Panchnama (Ex.P/9) was prepared. Upon weighing, the ganja weighed 1.840 kilograms, of which 100 grams was taken out separately for testing. Both packets were sealed and a Seizure Panchnama Ex.P/11 was prepared. Thereafter, Assistant Sub-Inspector Vimlesh Singh recorded the statements of the witnesses as directed by them. After conducting on-the-spot proceedings, he returned to the police station with the goods and the accused and filed a First Information Report (Ex.P/24). He handed over the seized goods to the storehouse In-charge for safekeeping, who issued a Receipt (Ex.P/27). He duly arrested the accused and prepared an Arrest Panchnama (Ex.P/15). After the arrest, he informed the accused's son of the arrest (Ex. P/26). He sent a sample of the seized marijuana for testing to the FSL, Raipur, along with a memorandum from the Superintendent of Police. The constable brought the receipt to the police station and submitted the test report (Ex.P/23) from the Forensic Science Laboratory, Raipur which is reported to be positive along with a memorandum

from the Superintendent of Police, which was presented in the Court. After investigation, when sufficient evidence was found against the accused, this charge sheet was prepared and submitted before the Court.

4. After hearing the both parties charge under Section 20(b)(ii) (B) of Narcotics Drugs and Psychotropic Substances Act, 1985, was framed against the accused. Accused denied the charge and after completion of the prosecution evidence accused was examined under Section 313 of Criminal Procedure Code, 1973 in which accused stated that he was falsely implicated in the case and the accused had not led any evidence in his defence.
5. Prosecution in its support adduced oral evidence of Varun Tiwari (P.W.1), Tarun Rai (P.W.2), Ravindra Kumar Vishwakarma (P.W.3), C.P. Tiwari (P.W.4), Sarfulladin (P.W.5), Akshay Chaurasia (P.W.6), Vimlesh Singh (P.W.7), Ropan Paikra (P.W.8), Lalan Singh (P.W.9) and Munna Ram (P.W.10). The learned trial Court after evaluating the facts & evidence convicted the accused as aforesaid. Hence this appeal.
6. Learned counsel appearing for the appellant submits that he is not pressing this appeal on merits and confining the arguments to the quantum of sentence only. He would next contend that the sentence awarded to the appellant is R.I. for 05 years and the total period of custody of appellant is 3 months and 25 days, thereafter he was granted bail during trial and presently also he is on bail. He would next contend that since the incident is of the year 2012 and

more than 13 years have elapsed, therefore, it is prayed that the sentence awarded to appellant be reduced to the period already undergone by him.

7. *Per contra*, learned State counsel would submit that the judgment of the trial Court is well merited which do not call for any interference.
8. I have heard learned counsel for the parties and perused the evidence.
9. Perusal of the record and the evidence available on record, it emerges that the prosecution case is based on recovery of 1 Kg 840 grams of Ganja from the house of the appellant pursuant to secret information received by ASI Vimlesh Singh (P.W.7).
10. The recording of information, Search of Force before search Panchnama (Ex.P.-1), Informant Information Panchnama (Ex.P.-2), Report of the reasons for the search (Ex.P.-3), Search of witnesses Panchnama (Ex.P.-4), Recovery Panchnama (Ex.P.-5), Identification Panchnama (Ex.P.-6), Samras Panchnama (Ex.P.-7). Physical verification of the weighing scale, Panchnama (Ex.P.-8), Drug Weighing Panchnama (Ex.P.-9), Seal Sample Panchnama (Ex.P.-10), Property Seizure Memo (Ex.P.-11), Seal sample (Ex.P.-12), Crime description (Ex.P.-13), Format for not obtaining Search Warrant (Ex.P.-14), Arrest Memo Ex.P.-15, Site map prepared by the Patwari (Ex.P.-16), Independent witnesses-Tarun Rai (P.W.2) and Ravindra Kumar Vishwakarma (P.W.3) have not supported any of the above proceedings, stating that they do not know the

accused, they have only supported signing. Similarly, independent witness Sarfulladin (P.W.5), who did the weighing, also stated that he did not know the accused and supported only signing the Weighing Panchnama (Ex.P.8) and the Intoxicant weighing Panchnama (Ex.P.9). He also supported signing the notice (Ex.P. 17). The prosecution did not support the above independent witnesses Tarun Rai (P.W. 2), Ravindra Kumar Vishwakarma (P.W. 3) and Sarfulladin (P.W. 5) under Section 154 of the Indian Evidence Act. The FSL report (Ex.P-22,23) conclusively establishes that the seized substance was Ganja.

11. Though independent witnesses Tarun Rai (P.W. 2), Ravindra Kumar Vishwakarma (P.W. 3) and Sarfulladin (P.W. 5) did not support the prosecution and were declared hostile, they have admitted their signatures on seizure related documents. Further, the evidence of Patwari Ex.P.-16 establishes preparation of site map and memorandum at the spot and the Investigating Officer Vimlesh Singh (P.W.7) has consistently deposed regarding recovery of contraband from the possession of the appellant. Mere hostility of independent witnesses does not demolish the prosecution case when seizure is otherwise proved through cogent official testimony and remains corroborated by scientific evidence.
12. Thus, the seizure of contraband Ganja from the possession of the appellant stands proved. Accordingly, the finding of conviction recorded by the learned trial Court under Section 20(b)(ii)(B) of the NDPS Act calls for no interference and is hereby affirmed.

13. As regards the quantum of sentence, considering the fact that the incident is of the year 2012, the quantity of contraband is 1.840 Kilogram, the appellant has faced long trial and suffered total custodial period of 03 months and 25 days thereafter he was granted bail during trial and he is presently on bail and no criminal antecedents are brought on record. Considering the totality of circumstances and the period of detention already undergone by the appellant, this Court is of the view that ends of justice would be met by reducing the substantive sentence to the period already undergone by the appellant. The fine amount shall remain intact. It is ordered accordingly.
14. Consequently, this appeal stands **allowed in part** to the extent indicated herein-above.
15. Appellant is on bail. His bail bonds shall remain operative for a period of 06 months in view of Section 437A of CrPC (now Section 481 of Bhartiya Nagrik Suraksha Sanhita, 2023).
16. The lower court record along with a copy of this judgment be sent back immediately to the trial court concerned for compliance and necessary action.

Sd/-
(Arvind Kumar Verma)
JUDGE