



2026:CGHC:3944



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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 359 of 2017

1 - Abhishek Albert S/o Late Shri Albert Aged About 26 Years R/o Mission Chowk Kedarpur Ambikapur, Thana- Ambikapur, Civil And Revenue District Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

... Appellant(s)

versus

1 - State Of Chhattisgarh Through The District Magistrate, Ambikapur, District Surguja, Chhattisgarh., Chhattisgarh

... Respondent(s)

For Appellant	:	Shri Mahendra Dubey, Advocate
For Respondent/State	:	Shri Rishi Raj Pithava, Dy.GA

(Hon'ble Shri Justice Arvind Kumar Verma)

Judgment on Board

22/01/2026

This appeal under Section 374 of the Code of Criminal Procedure has been filed being aggrieved by the impugned judgment of conviction and order of sentence dated 31.01.2017, passed by the Special Judge



(NDPS Act), Ambikapur in Special Criminal Case No.18/2010 whereby and whereunder the appellants have been held guilty for commission of the offence under Section 20(b)(ii)(B) of the NDPS Act and sentenced each of them to undergo RI for three years with fine of Rs. 10,000/-, in default of payment of fine to further undergo RI for six months on each count.

2. When the matter was called out today, none appeared on behalf of the appellant. 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 appellant and to argue the appeal on his 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 appellant, as his interests have been adequately safeguarded by the appointment of a Legal Aid Counsel.



5. In the present case there were two appellants. Appellant No.1 Ashish Kumar Soni has died on 11.12.2019 and the fact of his death has been confirmed upon verification by the State on 11.12.2019. Therefore, the appeal in his behalf stands abated as has been ordered by this Court on 10.01.2022. Hence, the present appeal is on behalf of appellant No.2.

6. The prosecution case, in brief, is that on 29.06.2016, Sub-Inspector R.K. Nishad (PW-7), posted at Police Station Ambikapur, received a secret information from an informant to the effect that the appellants, residents of Kedarapur, Ambikapur, were engaged in the illegal possession and sale of contraband substance, namely Ganja, and that they were carrying the said contraband while coming from the Batouli side.

7. Upon receipt of the said information, the police officer reduced the same into writing and prepared the Mukhabir Panchanama (Ex.P-1), which was duly forwarded to the office of the City Superintendent of Police (CSP), Ambikapur, in compliance with the mandatory statutory provisions. Thereafter, independent witnesses, namely Rajesh Singh and Bittu Gupta, were summoned, and in their presence, an information panchanama was prepared. Subsequently, the police party proceeded to the spot near Mission Hospital on the Kedarapur road. There, the appellants were intercepted and found riding a motorcycle, with appellant Ashish Albert driving the vehicle and appellant Ashish Soni carrying the contraband substance. After informing the appellants of



their legal rights and following the prescribed procedure under law, the police conducted a search, which resulted in the recovery of contraband Ganja from their possession. The seized substance was weighed, and its total weight was found to be approximately 2 kilograms. A weight measurement panchanama was prepared (Ex.P-8), and representative samples of 50 grams each were drawn in accordance with law. The seized contraband and samples were duly sealed and seized under proper seizure memo in the presence of independent witnesses.

8. Thereafter, the investigation officer arrested the appellants in accordance with law and deposited the seized articles in the Malkhana. Upon completion of the investigation and after complying with all mandatory legal formalities, a charge-sheet was filed before the competent Court. On the basis of the material available on record, the learned Special Judge framed charges against the appellants under Section 20(b)(ii)(B) of the NDPS Act. The appellants denied the charges and claimed to be tried, taking the plea of false implication.

9. During trial, the prosecution examined as many as eight witnesses. Upon appreciation of the oral and documentary evidence on record, the learned trial Court found the appellants guilty of the offence charged and convicted them, imposing the sentence as mentioned hereinabove. Aggrieved by the impugned judgment of conviction and sentence, the appellant has preferred the present appeal.

10. Learned counsel for the appellant submits that the mandatory provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985, particularly Sections 42 and 50, have not been complied with by



the Investigating Officer. It is contended that the independent witnesses, namely PW-1 Rajesh Singh, PW-2 Pankaj Gupta and PW-8 Vijay Kumar Gupta @ Bittu, have not supported the prosecution case and, therefore, the conviction of the appellants is based solely on the testimony of the Investigating Officer, which, according to the appellant, is not reliable in view of the lacunae committed during investigation.

11. It is further argued, in the alternative, that the present case pertains to the first offence of the appellant and the quantity of contraband allegedly seized is 2 kilograms. It is submitted that the appellant has remained in custody during the period from 30.06.2010 to 15.07.2010 and thereafter from the date of judgment i.e. 31.01.2017 to 06.03.2017, and therefore, a lenient view deserves to be taken in the matter of sentence.

12. Per contra, learned State counsel supports the impugned judgment and submits that the prosecution has successfully proved its case beyond reasonable doubt. It is contended that the learned trial Court, upon proper appreciation of the oral and documentary evidence available on record, has rightly convicted the appellants for the offence punishable under Section 20(b)(ii)(B) of the NDPS Act and no interference is warranted by this Court.

13. Heard learned counsel for the parties and carefully perused the record.

14. On perusal of the evidence, it is evident that Sub-Inspector R.K. Nishad (PW-7), posted at Police Station Ambikapur, received secret



information to the effect that the appellants, residents of Kedarapur, Ambikapur, were engaged in the illegal possession and sale of contraband substance, namely Ganja, and that they were carrying the said contraband while coming from the Batouli side.

15. So far as the contention regarding non-compliance of Section 50 of the NDPS Act is concerned, the same is devoid of merit. The provision of Section 50 of the Act is attracted only when the personal search of the accused is conducted. In the present case, the contraband was not recovered from the personal search of the appellants but from a bag in their possession. Therefore, the mandate of Section 50 of the NDPS Act is not attracted.

16. Further, no material contradiction or substantial infirmity has been pointed out in the testimony of the Investigating Officer. Mere non-support by independent witnesses does not ipso facto render the prosecution case doubtful, particularly when the evidence of the official witnesses inspires confidence and is corroborated by documentary evidence.

17. Upon a holistic appreciation of the entire evidence on record, this Court is of the considered opinion that the learned trial Court has rightly held the appellants guilty and convicted them under Section 20(b)(ii)(B) of the NDPS Act. Therefore, the finding of conviction does not call for interference

18. However, as regards the sentence, this Court finds that the



punishment imposed by the learned trial Court requires reconsideration. It is not disputed that the contraband seized from the appellant is 2 kilograms and that the present case relates to his first offence. It is also relevant to note that the incident occurred in the year 2013 and more than twelve years have elapsed since then. The appellant has already undergone a period of incarceration.

19. Having regard to the totality of the facts and circumstances of the case, including the nature and quantity of the contraband, the period of custody already undergone, the lapse of time since the incident, and the fact that the appellant is first-time offenders, this Court is of the view that the sentence of rigorous imprisonment awarded by the learned trial Court deserves to be reduced. Accordingly, the sentence of rigorous imprisonment is reduced to the period already undergone by the appellant. The fine of ₹10,000/- imposed by the learned trial Court shall remain intact along with the default stipulation.

20. Since the appellant is reported to be on bail, his bail bonds and surety bonds shall stand discharged, subject to deposit/payment of the fine amount, if not already deposited.

21. The appellant 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