



2026:CGHC:24196

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

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CRA No. 234 of 2020

Vijay Pawar S/o Bhagirath Pawar Aged About 26 Years Resident Of Village Kusumba, Thana- Jalgaon, District- Jalgaon (Maharastra)

... Appellant

versus

State of Chhattisgarh Through- Station House Officer, Police Station - Farasgaon, District- Kondagaon (CG)

... Respondent

For Appellant	:	Mr. Awadh Tripathi, Advocate.
For Respondent	:	Mr. Jitendra Shrivastava, Govt. Advocate.

Hon'ble Smt. Justice Rajani Dubey, J

CAV Judgment

The appellant in this appeal under Section 374(2) of CrPC has challenged the legality, validity and propriety of the judgment of conviction and order of sentence dated 21.1.2020 passed by learned Special Judge, NDPS Act, Kondagaon, in Special Criminal Case (NDPS Act, 1985)

No.26/2018 whereby the appellant stands convicted under Section 20(b)(ii) (C) of Narcotic Drugs and Psychotropic Substances Act, 1985 and sentenced to undergo RI for 10 years, pay a fine of Rs.1 lakh and in default thereof to suffer additional RI for one year.

02. Case of the prosecution, in brief, is that Investigating Officer Ajay Jha, Sub-Inspector at Police Station Farsagaon. on 04.12.2017 received a secret information that a white-colored truck bearing registration No. MH 28 B-8619 was transporting illegal cannabis (ganja) from Jagdalpur to Farsagaon for unlawful gain. The Investigating Officer recorded this information in the station diary (Roznamcha Sanha) and summoned witnesses Raisu Salam and Balram Soni through notices. Upon their arrival, they were informed of the tip-off, and an informant panchnama was prepared. A copy of the same was sent along with a report through Constable Rohit Pousarya to the Sub-Divisional Officer of Police, Farsagaon. Since the contraband (ganja) was being transported in a truck, waiting for a search warrant or the arrival of a gazetted officer might have allowed the accused to escape. Therefore, a panchnama under Section 42(2) of the NDPS Act was prepared explaining the inability to obtain a search warrant. Thereafter, along with staff members—Assistant Sub-Inspector Bhanu Pratap Yadav, Assistant Sub-Inspector Pitambar Kathar, Constables Vikas Dugga and Panchuram Markam, and the witnesses—the Investigating Officer proceeded with an investigation kit and set up a blockade on NH-30 road in front of Police Station Farsagaon.

03. After some time, at around 09:20 AM, the said truck (MH 28 B-8619) was seen coming from Jagdalpur towards Farsagaon. It was intercepted and stopped in front of the police station. Upon questioning, the driver disclosed his name as accused Vijay Pawar. The Investigating Officer Ajay Jha served

a notice under Section 50 of the NDPS Act to the accused, informing him of his legal rights and asking whether he wished to be searched by the Investigating Officer himself or by a gazetted officer. The accused gave written consent for his search to be conducted by the Investigating Officer. Thereafter, the Investigating Officer conducted his own search and that of the accompanying staff and witnesses in the presence of the accused, and a panchnama was prepared. Subsequently, the search of the accused and the truck in his possession was conducted. From the rear portion of the truck, a total of 280 packets of ganja wrapped in brown cellotape were recovered in the presence of witnesses, and a seizure panchnama was prepared. From each packet, a small sample of ganja was taken out and shown to the witnesses; it was smelled and burned, emitting a strong odor typical of ganja. Based on their experience, the witnesses identified the substance as ganja. Thereafter, for weighing purposes, Constable Vikas Dugga was served a notice to call Virendra Bhardwaj, who arrived at the spot with an electronic weighing machine. The machine was physically verified in the presence of witnesses and a panchnama was prepared. Upon weighing, the total quantity of seized ganja was found to be 607.220 kilograms, and a weighment panchnama was prepared. The seized ganja was formally confiscated from the accused in the presence of witnesses, and a seizure memo was prepared. Thereafter, the accused was issued a notice under Section 91 CrPC to produce vehicle documents, upon which he produced the RC book, insurance, and permit of the vehicle. These documents were seized and a seizure memo was prepared. The accused was then arrested.

04. At the spot, Investigating Officer Ajay Jha registered a preliminary (Dehati) report in Crime No. 0/17. Thereafter, the seized property and the

accused were brought to the police station, where the formal report was submitted. Based on this, Inspector Krishna Patle registered FIR No. 116/17 under Section 20(b)(ii)(C) of the NDPS Act. During investigation, statements of witnesses were recorded. A spot map of the place of occurrence was prepared, and a revenue (Patwari) map was obtained. The seized ganja was subjected to inventory proceedings through the Executive Magistrate, Farsagaon, and photographs were taken. After inventory, two sample packets of 50 grams each were prepared and sent to the Forensic Science Laboratory (FSL) for chemical examination. The report confirmed that the samples were ganja. After completing other necessary investigation, the charge sheet was filed on 01.06.2018.

05. Learned trial Court framed charge under Section 20(b)(ii)(C) against the accused to which he abjured his guilt and prayed for trial. In order to prove its case, the prosecution examined as many as 12 witnesses. Statement of the accused was also recorded under Section 313 of CrPC in which he denied all the incriminating circumstances appearing against him in the prosecution case, pleaded innocence and false implication. However, no evidence was adduced by him in defence.

06. Learned trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned in para 1 of this judgment. Hence this appeal.

07. Learned counsel for the appellant would submit that the impugned judgment is per se illegal and contrary to the evidence available on record. In this case, the independent witnesses (PW-1 & PW-2) have not supported the

prosecution case and turned hostile. PW-3 ASI Pitambar Kathar admits that after intercepting the vehicle, the investigating officer did not prepare any panchanama before him regarding enquiry from the accused. PW-4 Vikas Kumar Dugga, Constable, admitted that he has no knowledge regarding what proceedings took place at the scene during the interval between his departure to fetch the weighman and subsequent return to the scene with him. He also admitted that in his presence the IO did not give any notice to the accused regarding search by the gazetted officer. Learned counsel further submitted that there are major contradictions in the statement of IO (PW-10). Further, the samples have not been proved to be bearing any particular seal of the officer in-charge of police station or even of the officer who effected seizure and drew samples. The FSL report does not mention as to which was that sample seal which was sent along with the sample. In the FSL report, there is mention that the seal affixed on the sample sent for test tallied with the sample seal.

08. Learned trial Court ought to have seen that the prosecution has failed to comply with the mandatory provisions of the NDPS Act while effecting search and seizure of contraband. PW-6 Shivprasad Thakur, Malkhana Moharrir, admitted in cross-examination that there is no mention in Ex.P/39 regarding handing over the key of the vehicle, he was not provided with the sample seal while depositing the contraband in Malkhana, he did not weigh the seized article before depositing in Malkhana; and he did not mention in Ex.P/39 as to by which seal the seized article was sealed. He also admitted that he did not see what was stuffed in the sacks and that he did not mention in Ex.P/39 regarding sending the seized article to FSL for examination. This

witness also admits that there is no mention in the Malkhana register that after FSL examination of Article A, the same deposited back in the Malkhana.

09. Learned counsel would next submit that as per evidence of PW-10 Chaitram Netam, no written proceeding was conducted before him regarding giving sample of the suspected article. PW-11 Rohit Kumar, Constable, admits that in the acknowledgment of information Ex.P/27 forwarded to the SDOP, Farasgaon, there is no mention of serial number and date. He also admits that he did not deposit the seized sample in the Malkhana. Likewise, the evidence of PW-12 Krishna Patle also shows that there are material procedural irregularities committed while conducting search and seizure proceedings, drawing and sealing the sample, sending the same to Malkhana and FSL for examination etc. Thus, it is clear that the prosecution case is fraught with inconsistencies and procedural lapses that cast serious doubt on the identity, seizure and safe custody of the alleged contraband. The prosecution has failed to prove its case against the accused/appellant beyond reasonable doubt and therefore, the impugned judgment is not sustainable. The appellant deserves to be acquitted of the charge leveled against him.

Reliance has been placed on the decisions of the Hon'ble Supreme Court in the matters of ***Sanjeet Kumar Singh Vs. State of CG, (2022) 16 SCC 58; Yusuf @ Asif Vs. State*** in ***CRA No.3191 of 2023, 2023 INSC 912; Mohammed Khalid and another Vs. State of Telangana*** in ***CRA No.1610 of 2023, 2024 INSC 158***; and the ***judgment dated 26.11.2025*** of this Court in ***CRA No.492/2020*** in the matter of ***Venkata Soma Raju Vs. State of CG, 2025:CGHC:57595***.

10. On the other hand, learned counsel for the State supporting the impugned judgment submits that the investigating officer at the time of

effecting search and seizure proceedings has substantially complied with all the mandatory provisions of the NDPS Act. Though the independent witnesses have not fully supported the prosecution case but they have admitted their signatures on the seizure memo. This apart, the official witnesses have fully supported the prosecution case and their evidence cannot be discarded merely on the ground of they being official witnesses particularly in absence of any evidence on record to show their ill-intention or animosity as against the appellant for his false implication in this case. Learned trial Court having appreciated the overall oral and documentary evidence has rightly recorded a finding of guilt against the appellant which needs no interference by this Court. Therefore, the present appeal being *sans* merits is liable to be dismissed.

Reliance has been placed on the order dated 29.1.2025 of this Court in ***CRA No.217 of 2022*** the matter of ***Shahbaz Ahmed Seikh Vs. State of CG, 2025:CGHC:5345-DB***.

11. Heard learned counsel for the parties and perused the material available on record.

12. It is clear from the record of learned trial Court that the appellant was charged under Section 20(b)(ii)(C) of the NDPS Act on the ground that on the date of incident he was transporting 607.220 kg of Ganja by a vehicle No. MH 28B 8619 for the purpose of sale. After appreciation of oral and documentary evidence, the learned trial Court convicted and sentenced him as mentioned in paragraph 1 of this judgment.

13. PW-1 Virendra Singh Bharadwaj and PW-2 Balram Soni are independent witnesses. PW-1 denied his signature on Ex.P/1 to Ex.P/3

whereas PW-2 admitted his signature on all the documents from Ex.P/1 to P/19. The prosecution declared them hostile and cross-examined where they denied all the suggestions of the prosecution.

14. PW-6 Ajay Jha, investigating officer, states that on the date of incident he received a secret information that a person was transporting approximately 7 quintals of illegal narcotic substance (ganja/cannabis) in a Metador Eicher vehicle, carrying it from Odisha towards Raipur via Jagdalpur and Farasgaon. This information was recorded in the daily diary (Roznamcha Sanha), and thereafter, the secret information panchanama was handed over to a constable present at the police station and he was sent to the Sub-Divisional Officer of Police, Farasgaon. Thereafter, taking witnesses along with him and accompanied by Assistant Sub-Inspector Pitambar Kathar and other police personnel, he proceeded to conduct the operation. After reaching NH-30, they set up a checkpoint (road blockade). After some time, the vehicle matching the description given by the informer arrived at the spot. The vehicle was surrounded by the accompanying police force and apprehended. Upon stopping the vehicle, he asked the driver his name and address, and he disclosed his name as Vijay Pawar. He informed the accused about the informer's information and the possibility that ganja was being carried in the rear portion of his vehicle. Thereafter, the witnesses, the accompanying police personnel, and himself offered their personal search to the suspect. Subsequently, in the presence of the witnesses, he conducted the personal search of the suspect at the spot. During the search, no suspicious article was found in the possession of the suspect, the witnesses, or himself. Thereafter, in order to verify the informer's information regarding the storage of illegal narcotic substance (ganja) in the rear of the vehicle, a search of the

rear portion of the vehicle was conducted in the presence of the suspect and the witnesses and approximately 280 or 282 packets, as indicated by the informer, were found. Then he dispatched one of the accompanying constables to bring a person for weighing the seized material. After some time, the constable returned to the scene with the weighman. The approximately 280 or 282 packets kept in the rear of the vehicle were seized in the presence of the witnesses and the suspect. Based on the experience of the witnesses and upon inquiry, the substance was identified as ganja. The narcotic substance recovered from the possession of the suspect was duly seized at the spot, and the accused was formally arrested there itself. A Dehati Nalishi was recorded. Approximately 7 quintals of ganja contained in these packets was seized. Thereafter, he returned to Farasgaon Police Station with the accompanying police personnel and informed the Station House Officer, Sub-Inspector Krishna Patle, about all the proceedings conducted at the spot. He states that he can state the remaining details after seeing the court record and the Roznamcha Sanha.

15. This witness further states that after receiving secret information, he recorded the same in Rojnamcha Sanha at 7.25 AM vide Ex.P/23. Thereafter he issued duty certificate to Constable No.458 Rohit Pousarya for bringing two independent witnesses and recorded his departure in the Rojnamcha Sanha vide Ex.P/24. After some time, said Constable brought two independent witnesses Raisu Salam and Balram Soni with him and return of the said Constable was recorded in the Rojnacha Sanha vide Ex.P/25. Both these independent witnesses were made aware of the secret information vide Ex.P/26. He then prepared a report about secret information for conducting legal proceedings at the spot and forwarded the same to the SDOP,

Farasgaon through Constable Rohit Pousarya vide Ex.P/27 and recorded the same in the Rojnamcha Sanha vide Ex.P/28. Constable Rohit Pousarya returned from the office of SDOP and informed that since SDOP was not present there, he handed over the report to the Reader and gave acknowledgment which was recorded in the Rojnamcha Sanha vide Ex.P/29. He states that due to absence of SDOP and there being no contact with the Station House Officer, after receiving necessary instructions from SDOP, he made entry in the Rojnamcha Sanha regarding non-obtaining of warrant vide Ex.P/30 and also prepared a panchanama on 4.12.2017 at 8.55 am before the witnesses regarding non-obtaining of warrant vide Ex.P/5. Thereafter he along with the accompanying staff, independent witnesses and necessary documents proceeded for road blockade which was recorded in Rojnamcha Sanha at 8.55 am vide Ex.P/31.

16. In para 8 he states that after stopping the vehicle truck, he asked the name and address of the driver who disclosed his name as Vijay Pawar. He was then informed about the secret information and also made aware of his legal right of being searched vide Ex.P/6. After obtaining his written consent for search by the police vide Ex.P/7, initially he was allowed to make search of himself, the accompanying staff and the independent witnesses vide Ex.P/8, P/9 & P/10 respectively but no objectionable material was found in their possession. Thereafter, personal search of the accused was made and one mobile and four currency notes of five rupees were recovered vide Ex.P/11. However, upon search of the truck 280 packets were recovered vide Ex.P/12 which were marked as A1 to A280 vide recovery panchanama Ex.P/13. A small quantity of substance was drawn from each packet and the witnesses after smelling, rubbing and burning identified the contents of these

packets as Ganja vide identification panchanama Ex.P/14. The accused was given notice u/s 91 of CrPC for producing any legal document for transporting or selling the contraband but he wrote in the notice that he has no such licence. The said notice is Ex.P/32. Thereafter, he sent Constable 519 Vikas Dugga for bringing electronic weighing machine with weighman vide Ex.P/33 and then Vikas Dugga came back with weighman Virendra Singh and the weighing machine. Then physical verification of the weighing machine was done in presence of weighhman, witnesses and the accused vide Ex.P/1. Thereafter, each packet was weighed by Virendra Singh separately and total weight of the contraband was found to be 607.220 kg vide Ex.P/2.

17. He states that on 4.12.2017 he prepared seizure panchanama of all the packets A1 to A280 vide Ex.P/15 in presence of witnesses. Thereafter, he effected seizure of the truck No. MH 28B 8619, its insurance policy, RC Book, permit, one mobile of Samsung company and four currency notes of five hundred on being produced by the accused in presence of witnesses vide Ex.P/16. On 4.12.2017 he arrested accused Vijay Pawar in presence of witnesses vide Ex.P/17 and recorded Dehati Nalishi (Ex.P/34) on the spot at zero number under Section 20(b)(ii)(C) of the NDPS Act. After returning police station, he recorded all the proceedings in Rojnamcha Sanha vide Ex.P/35 and thereafter produced the Dehati Nalishi (Ex.P/34) before the Station House Officer Krishna Patle, Inspector. Based on this, the SHO lodged FIR (Ex.P/36) against the accused Vijay Pawar under Crime No.116/2017 for offence u/s 20(b)(ii)(C) of the NDPS Act. After registration of offence, intimation regarding arrest of the accused was given to his family members vide Ex.P/37. This witness admitted his signature on all these documents.

18. In his lengthy cross-examination, the defence failed to elicit anything from this witness which could discredit his evidence except some discrepancy in mentioning the time in Rojnamcha Sanha.

19. PW-3 Pitamber Kathar, Assistant Sub Inspector; PW-4 Vikas Kumar Dugga, Constable No.402 and PW-7 Bhanupratap Yadav, Sub Inspector, all are members of the police party. They supported the statement of the investigating officer Ajay Jha (PW-6) and remained firm in their cross-examination. They categorically stated about seizure of cannabis from the metador of the accused.

20. PW-9 Shivprasad Thakur, Malkhana Muharrir, states that he received 28 sealed plastic bags, documents of vehicle bearing No. NH-28-B-8619, one mobile of Samsung company with Vodafone SIM and four currency notes of 500 denomination from Inspector Krishna Patel for keeping the same in safe custody. Entry of the said articles was made in the Malkhana Register at Page No.229, S.No.80 and the acknowledgment given to Inspector Krishna Patle is Ex.P/38 which bears his signature from A to A part. He states that on 20.12.2017 Inspector Krishna Patle got the said seized plastic bags taken out from the Malkhana for *Samras* and sampling proceedings, for which a Panchnama was prepared. On 14.2.2018, 29 bags of ganja were deposited in the strong room at Kondagaon as per counter challan No.3/18 and later, on the orders of senior officers, the seized narcotic substance was destroyed on 18.03.2019 in the incinerator located at Raikot. The Malkhana Register is Ex.P/39 and its copy is Ex.P/39C.

21. In cross-examination, this witness admits the suggestion that he did not weigh the seized articles before depositing in Malkhana. He gave article A1 to

Constable Chaitram Netam on 16.1.2018 for depositing the same in FSL, Raipur for chemical analysis.

22. PW-10 Chaitram Netam states that he received sample packet on 16.1.2018 and deposited the same in FSL, Raipur. PW-12 Krishna Patle, Inspector, states that on 4.12.2017 at 17:35 hours the Sub Inspector Ajay Jha filed Dehati Nalishi (Ex.P/34), based on which he lodged FIR (Ex.P/36) under Crime No.116/2017 against the accused. He states that he wrote a letter to SDO, Kondagaon for the purpose of preparation of inventory and *samras* proceedings of the Ganja seized from accused Vijay Pawar. Based on this SDO, Kondagaon appointed Executive Magistrate, Farasgaon for preparation of inventory and *samras* proceedings and its acknowledgment was received by police station, Farasgaon on 14.12.2017 vide Ex.P/40.

23. PW-5 Hardik Shrivastava, Naib Tehsildar, states that he was appointed for inventory and *samras* proceedings by SDO, Kondagaon. He states that 28 sealed bags were produced before him which were got opened before the persons present there. There were total 80 packets, each packet was separately weighed and total weight of the contraband came to be 601.022 kg. Thereafter, he mixed the contraband of all the packets and drew two samples of 100-100 gm from it which were marked as A1 and A2 and sealed. The report regarding weighment and *samras* proceedings prepared by him is Ex.P/21 which bears his signature from A to A part. Thereafter, he prepared a certificate of the inventory as per Section 52(A)(2) of the NDPS Act vide Ex.P/22. He also got photography of the entire inventory proceedings vide Ex.P/23.

24. Learned counsel for the appellant strongly objected on the ground that independent witnesses have not supported the prosecution case and turned

hostile. The contraband was deposited on 16.1.2018 in FSL and there is nothing on record to indicate as to in whose custody the contraband and the sample packets were kept during this period. The unexplained delay coupled with absence of proper custody causes serious doubt on the reliability of the prosecution case, particularly when only police personnel have supported the proceedings of the investigating officer. Being so, it is clear that the prosecution has failed to prove its case against the accused/appellant beyond all reasonable doubt.

25. The Hon'ble Supreme Court in the matter of ***Bharat Aambale Vs. State of CG*** in ***CRA No.250/2025*** held in paras 41 & 42 of its judgment as under:

"41. As per Clause 2.5 of the Standing Order No. 1 of 89 I.e., the relevant standing order in force at the time of seizure, where multiple packages or packets are seized, they first have to be subjected to an identification test by way of a colour test to ascertain which packets are of the same sized, weigh and contents. Thereafter, all packets which are identical to each other in all respects will be bunched in lots, in the case of ganja, they may be bunched in lots of 40 packets each. Thereafter from each lot, one sample and one in duplicate has to be drawn. The relevant clause reads as under-

2.5 However, when the packages/containers seized together are of identical size and weight, bearing identical markings, and the contents of each package given identical results on colour test by the drug identification kit, conclusively indicating that the packages are identical in all respects, the packages/containers may be carefully bunched in lots of ten packages/containers except in the case of ganja and hashish (charas), where it may be bunched in lots of 40 such packages/containers. For each such lot of packages/containers, one sample (in duplicate) may be drawn."

42. As per Clause 2.8 of the Standing Order No. 1 of 89, while drawing a sample from a particular lot, representative samples are to be drawn,

in other words, equal quantity has to be taken from each packet in a particular lot, that then has to be mixed to make one composite sample. The relevant clause reads as under-

2.8 While drawing one sample (in duplicate) from a particular lot, it must be ensured that representative samples in equal quantity are taken from each package/container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot."

26. In light of the above, in the present case, the entire search and seizure proceedings have been found to be genuine and supported by entry of Rojnamcha Sanha. Except PW-1 and PW-2, independent witnesses, the other witnesses have duly supported the prosecution case and categorically stated that when the vehicle was stopped, the accused was found driving the same and upon search of the vehicle, 280 packets containing cannabis were seized from the vehicle, for which the accused failed to produce any document. The seizure of Ganja, its weight and sampling have been proved by the Executive Magistrate.

27. There is no absolute command of law that the police officers cannot be cited as witnesses and their testimony should always be treated with suspicion. Ordinarily, the public at large show their disinclination to come forward to become witnesses. If the testimony of the police officer is found to be reliable and trustworthy, the court can definitely act upon the same. If, in the course of scrutinising the evidence, the court finds the evidence of the police officer as unreliable and untrustworthy, the court may disbelieve him but it should not do so solely on the presumption that a witness from the Department of Police should be viewed with distrust. This is also based on the principle that quality of the evidence weighs over the quantity of evidence. The case of the prosecution cannot be rejected solely on the ground that

independent witnesses have not been examined when, on the perusal of the evidence on record the Court finds that the case put forth by the prosecution is trustworthy. When the evidence of the official witnesses is trustworthy and credible, there is no reason not to rest the conviction on the basis of their evidence.

28. In the case in hand, there is no material on record so as to arrive at the finding that the accused has been falsely implicated in this case because of any ill-will or animosity of him with the police. The accused/appellant has also failed to point out any substantial non-compliance of any of the mandatory provisions of the NDPS Act. The FSL report (Ex.P/44) proves that the sample packets sent for examination contained cannabis and further corroborates the allegation against the appellant. Learned trial Court also minutely appreciated the oral and documentary evidence and rightly convicted and sentenced the appellant under Section 20(b)(ii)(C) of the NDPS Act. The said finding is neither perverse nor contrary to the record, it being in accordance with the law laid down by the Hon'ble Supreme Court needs no interference. The judgments relied upon by learned counsel for the appellant being distinguishable on facts are of no help to him.

29. On the basis of aforesaid discussion, this Court finds no substance in this appeal. Accordingly, the appeal stands dismissed. The impugned judgment passed by learned trial Court is hereby affirmed. The appellant is reported to be in jail, therefore, no order regarding his arrest, surrender etc. is required to be passed.

**Sd/
(Rajani Dubey)
Judge**