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HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 294 of 2018

1 - Sanat Kumar Pobiya S/o Ran Sai Pobiya Aged About 33 Years
R/o Village Shalhe Tahsil And Thana Dabhra, District Janjgir Champa
Chhattisgarh.

2 - Narendra Patel S/o Babulal Patel Aged About 47 Years R/o
Village Reda Tahsil And Thana Dabhra, District Janjgir Champa
Chhattisgarh. **(Abated)**

... Appellants

versus

State Of Chhattisgarh Through Police Station Dabhra, District Janjgir
Champa Chhattisgarh, District : Janjgir-Champa, Chhattisgarh

---- Respondent

For Appellants	: Mr. Ramakant Patel, Advocate appears on behalf of Mr. Banhiman Roy, Advocate
For State/Respondent	: Mr. Suresh Tandan, PL

Hon'ble Shri Justice Arvind Kumar Verma

Judgment on Board

20/03/2026



1. At the outset, learned counsel for the appellants would submit that during the pendency of this appeal, appellant No.2 namely Narendra Patel has died on 23.03.2021. In this regard his death certificate is also placed on record.
2. As there is no application has been filed under Section 394 of Cr.P.C., 1973 for continuation of appeal by the legal heirs of the appellant No.2 within a period of 30 days from the date of death of appellant No.2, hence, this appeal is abated on his behalf. Now, this Court proceed to here the appeal on behalf of Appellant No.1 – Sanat Kumar Pobiya only.
3. This criminal appeal has been preferred by the appellant under Section 374(2) of CrPC being aggrieved with the judgment of conviction and order of sentence dated 16.02.2018 passed in NDPS Case No.27/2017 by the Special Judge (NDPS), Janjgir-Champa (C.G.), whereby the trial Court has convicted the appellant as under :

Conviction	Sentence	In Default
Under Section 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985	R.I. for 03 years and fine amount of Rs.10,000/-	In default of payment of fine amount further R.I. for 06 months



4. According to the case of prosecution is that on 12.09.2017, N.K. Tiwari, Sub Inspector of PS Dabhra received the secret information from the informant that two persons were carrying contraband Ganja in motorcycle from village Shalhe. On the basis of said information, the police have seized total 09 kg and 180 gram of Ganja from the possession of the appellant. After due procedure, the appellant was arrested, and offence was registered against the accused and after due investigation charge sheet was filed against the accused/appellant.
5. So as to hold the accused/appellant guilty, the prosecution has examined as many as 10 witnesses and exhibited 43 documents. The statement of the accused/appellant was also recorded under Section 313 of the Cr.P.C. in which he denied the circumstances appearing against him and pleaded innocence and false implication in the case.
6. After hearing the parties, vide impugned judgment of conviction and order of sentence dated 16.02.2018, learned Special Judge has convicted and sentenced the appellant as mentioned in para-3 of this judgment. Hence, the present appeal.



7. Learned counsel appearing on behalf of the appellant contended that he does not wants to press this appeal on merits and confines his argument to the sentence part only. He further submits that the incident is of the year 2017 and he is facing /is since 2017. Appellant has undergone about 05 months and 12 days, therefore, it is prayed that the jail sentence awarded to the appellant may be reduced to the period already undergone by him.
8. Per contra, learned counsel for the State/respondent opposes the argument raised by counsel for the appellant, supported the impugned judgment and submits that sentence awarded by the trial Court is just and proper and requires no interference.
9. I have heard learned counsel appearing on behalf of the parties and perused the material available on record with utmost circumspection.
10. On perusal of the records, I have found that on 12.09.2017, N.K. Tiwari, Sub Inspector of PS Dabhra received the secret information from the informant that two persons were carrying contraband Ganja in motorcycle from village Shalhe. On the basis of said information, the police have



seized total 09 kg and 180 gram of Ganja from the possession of the appellant. After due procedure, the appellant was arrested, and offence was registered against the accused and after due investigation charge sheet was filed against the accused/appellant.

11. Under Section 42 of the NDPS Act, 1985 prescribed for power of entry, search, seizure and arrest without warrant or authorization.

12. The next issue that falls for our consideration is with respect to the compliance of Section 42 of the NDPS Act 1985. For the said purposes, an analysis of the bare text of Section 42 of the NDPS Act 1985 is undertaken hereinafter. Section 42 of the NDPS Act 1985 is worded as follows:

“42. Power of entry, search, seizure and arrest without warrant or authorisation.—

(l) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any



such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,—

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or



conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

[Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector:

Provided further that] if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.



(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.”

13. On perusal of the record, it transpires that the Investigating Officer has complied with provision of Sections 42, 52-A (3) & 55 of the NDPS Act.
14. The Report of Regional Forensic Science Laboratory, which shows that the samples of seized articles have been found positive. Therefore, in considered opinion of this Court, the trial Court has rightly convicted the appellant for the offence punishable under Section 20(b)(ii)(B) of the NDPS Act. I do not find any illegality and infirmity in the findings recorded by the trial Court with regard to the conviction part.
15. Considering the above facts and circumstances of the case, particularly, considering the fact that the contraband Ganja seized from the possession of the appellant is 09 Kg 180 gram in total; he has already undergone about 05 months and 12 days out of the period of 03 years sentence imposed upon him by the trial Court, I am of the considered opinion that the ends of justice would be met if, while upholding the conviction imposed upon the appellant, the jail sentence



awarded to him is reduced to the period already undergone by him. The fine amount imposed by the learned trial Court shall remain intact. If the fine amount is not deposited by the appellant, he shall further undergo as has been ordered by the learned trial Court. Ordered accordingly.

16. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Kumar Verma)
Judge

Vasant