



2026:CGHC:14935

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRA No. 410 of 2019**

Umakant Kosale S/o Kusumdas Kosale Aged About 20 Years R/o Village Semariya, Police Station Vidhan Sabha, District Raipur Chhattisgarh

... Appellant**versus**

State of Chhattisgarh Through Station House Officer, Police Station Pithoura District Mahasamund Chhattisgarh

... Respondent

For Appellant : Ms. Nirupama Bajpai, Advocate

For State /Respondent : Mr. Suresh Tandan, PL

(Hon'ble Shri Justice Arvind Kumar Verma)**Judgment on Board****01/04/2026**

1. This criminal appeal preferred by the appellant under Section 374 (2) of the Code of Criminal Procedure is directed against the impugned judgment dated 02/08/2016 passed by the Special Judge, (NDPS Act, 1985), Mahasamund, C.G. in Special Criminal Case H. 17/2015 whereby the appellant has been convicted and sentenced as under:-



Conviction	Sentence
Under Section 20 (b) (ii) (B) NDPS Act, 1985	R.I. for 05 Years and fine of Rs.10,000/- in default of payment of fine to undergo additional R.I. for 06 Months.

- The case of the prosecution in brief is that the Complainant G.S. Chandel, Assistant Sub-Inspector, was posted at Pithora Police Station on 26 May 2015. On that date, information was received from an informant that a man was traveling through the Pilwapali forest on a black motorcycle number CG 04 KZ 7084, carrying marijuana in a bag. A daily report was recorded in connection with this information and independent witnesses were called. He was summoned. Independent witnesses were asked to be present at Dongripali Chowk. Failure to act immediately could have resulted in the marijuana being transported. Therefore, information was sent to his superior officer, the SDOP, regarding the possibility of proceeding with the investigation without obtaining a search warrant. He and his accompanying staff headed for Dongripali Chowk. Witnesses Narayan Agarwal and Sachin Yadav, present at Dongripali Chowk, were informed of the informant's information. A cordon and search was established at Dongripali Chowk, where a motorcycle arrived, based on the information, and the motorcycle was stopped and questioned.
- A notice was issued regarding the search, and consent was obtained. Upon receiving consent, the accused allowed the police and independent witnesses present to search him. Upon searching, no narcotics were found on him. A bag containing six packets of marijuana was recovered



and identified. The contents of the individual packets were then mixed together. The scales were physically verified. The total weight of all the marijuana packets was 06 KG. From the recovered Ganja 100 grams was seized for sample. Two sample packets of 50 grams each were made by taking them out separately and the sample packets were marked with A and B. The sample packets and the remaining ganja were sealed. The motorcycle and ganja were seized. The accused was arrested. A spot map was prepared. After returning to the police station, a First Information Report was registered.

4. The seized material was kept safely in the police station's storeroom. The sample packet of the seized material was sent to FSL Raipur for testing through the Superintendent of Police, Mahasamund, and the contents of the sample packet were found to be ganja. Information about the entire action was sent to his senior officer, SDOP. An inventory was prepared regarding the seized material from the Executive Magistrate, Pithora. Photographs were taken.
5. After completing the investigation, the charge sheet was presented. The accused has denied the charges. In his defense statement, he states that he was in village Sandi for a wedding when the police arrested him and forced him to sign several documents. He claims to be innocent and falsely implicated. He has not produced any witness in his defence.
6. Learned trial Court after examining the material and evidence available convicted the accused persons. Hence this appeal.
7. Learned counsel appearing for the appellants submits that she is not



pressing this appeal on merits and confining the arguments to the quantum of sentence only. She would next contend that the sentence awarded to the appellants is R.I. for 05 Years and the appellant was in jail since 27/05/2015 to 02/04/2019 i.e. approx 03 Years and 10 Months thereafter he was granted bail by this Court and presently also he is on bail. She would next contend that since the incident is of the year 2015 and nearly 11 years have elapsed, therefore, it is prayed that the sentence awarded to appellant be reduced to the period already undergone by him.

8. *Per contra*, learned State counsel would submit that the judgment of the trial Court is well merited which do not call for any interference.
9. I have heard learned counsel for the parties and perused the evidence.
10. The following points arise for consideration in this appeal:
 - (1) Whether the prosecution has proved beyond reasonable doubt that the appellant was found in conscious possession of contraband ganja as alleged?
 - (2) Whether the mandatory provisions and procedural safeguards under the NDPS Act have been complied with?
 - (3) Whether the conviction recorded by the learned trial Court is sustainable?
 - (4) If the conviction is upheld, whether the sentence imposed requires interference?
11. All the aforesaid points for determination being interconnected and



arising out of the same set of facts and evidence are taken up together for consideration. This Court has carefully examined the entire record, including the oral and documentary evidence adduced by the prosecution, the statement of the appellant recorded under Section 313 of the Cr.P.C., and the findings returned by the learned trial Court.

12. The appreciation of evidence is required to be undertaken in the light of the settled legal principles governing cases under the NDPS Act, particularly with regard to proof of conscious possession, compliance of statutory safeguards, and the evidentiary value of official witnesses. Accordingly, the points for determination are answered as follows:

Finding on Point Nos. 1 to 3 (Conviction):

13. The prosecution case, in brief, is that on the basis of prior information, the appellant was apprehended while transporting ganja, and upon search, contraband was recovered from his possession. The seizure proceedings were carried out, samples were drawn, sealed and sent for chemical examination.
14. The testimony of the Investigating Officer and other official witnesses clearly establishes the factum of search and seizure. Their evidence remains consistent and withstands cross-examination. Nothing substantial has been elicited to discredit their version. The seizure of contraband from the possession of the appellant stands duly proved.
15. It is true that the independent witnesses have not supported the prosecution case in material particulars. However, it is well settled that the evidence of official witnesses cannot be discarded merely on that



ground, if otherwise found reliable. In the present case, the evidence of official witnesses inspires confidence and there is no reason to disbelieve the same.

16. The record further reveals that samples were properly drawn and sealed at the spot, and the same were sent for forensic examination. The FSL report confirms that the seized substance was ganja. The chain of custody of the seized articles has been duly established and there is no material to indicate any tampering. So far as compliance of statutory provisions is concerned, the evidence indicates substantial compliance with the requirements under the NDPS Act. No serious procedural lapse has been pointed out which goes to the root of the matter or vitiates the trial. The defence of false implication taken by the appellant is not supported by any evidence. No plausible explanation has been offered as to why the appellant would be falsely implicated.
17. Upon an overall appreciation of the evidence on record, this Court is of the considered opinion that the prosecution has been able to prove that the appellant was in conscious possession of contraband ganja. The findings recorded by the learned trial Court are based on proper appreciation of evidence and do not suffer from any perversity or illegality.
18. Accordingly, the conviction of the appellant under Section 20(b)(ii)(B) of the NDPS Act is affirmed.

Finding on point No. 4 (Sentence):

19. Having upheld the conviction, this Court proceeds to examine the



question of sentence. The record reflects that the appellant was taken into custody on 27.05.2015 and continued to remain in custody even after the judgment of conviction dated 02.08.2016, till he was granted bail by this Court vide order dated 02.04.2019. Thus, the appellant has undergone actual incarceration of about 3 years, 10 months and 6 days.

20. The appellant has been sentenced to undergo rigorous imprisonment for 5 years with fine of Rs.10,000/-. The quantity of contraband involved is above small quantity but below commercial quantity. It is also borne out from the record that the appellant was about 20 years of age at the time of the incident and there is no material to indicate any criminal antecedents. Further, after his release on bail on 02.04.2019, there is nothing on record to show that he has misused the liberty granted to him.
21. The incident pertains to the year 2015, and the appellant has faced the rigours of criminal proceedings for a long period. The substantial period of incarceration already undergone, coupled with his satisfactory conduct during the period of bail, are relevant mitigating factors.
22. Considering the actual custody of about 3 years 10 months, the fact that the appellant has already undergone a major portion of the sentence, the absence of criminal antecedents, the young age of the appellant at the time of incident, and the long lapse of time since the occurrence, this Court is of the view that the ends of justice would be met if the sentence of imprisonment is reduced to the period already undergone.
23. The conviction of the appellant under Section 20(b)(ii)(B) of the NDPS Act is affirmed. The sentence of imprisonment is modified to the period



already undergone. The fine amount imposed by the trial Court is maintained. In case the fine has not been deposited, the same shall be deposited within the stipulated time, failing which the appellant shall undergo the default sentence.

24. Accordingly, the appeal is **partly allowed**.
25. 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).
26. 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

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