



2026:CGHC:9735



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NAFR

## HIGH COURT OF CHHATTISGARH AT BILASPUR

### CRA No. 425 of 2018

**1** - Hemraj Netam S/o Sukhlal Netam Aged About 26 Years R/o Village Ravnaguda, Police Station Kundai, Distt. Navarangpur, Orissa, District : Nabarangapur \*, Orissa

**2** - Dhaniram Markam S/o Dashmu Markam Aged About 24 Years R/o Village Ravnaguda, Police Station Kundai, Distt. Navarangpur, Orissa, District : Nabarangapur \*, Orissa

**... Appellant(s)**

**versus**

**1** - State Of Chhattisgarh Through The Station House Officer, Police Station City Kotwali, Dhamtari, District Dhamtari Chhattisgarh, District : Dhamtari, Chhattisgarh

**... Respondent(s)**

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For Appellant(s) : Mr. Rajkumar Pali, Advocate

For Respondent(s) : Mr. Jitendra Shrivastava, G.A.

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**Hon'ble Shri Justice Arvind Kumar Verma**

**Judgment on Board**

**24/02/2026**

1. This criminal appeal has been filed under Section 374 (2) of Cr.P.C., 1973 by the appellants against the judgment of conviction and order of sentence dated 07.02.2017 passed by the learned Special Judge (N.D.P.S. Act, 1985), Dhamtari (C.G.), in Special



Criminal Case No. 22/2016, whereby the appellants have been convicted and sentenced as follows:-

| Convicted                              | Sentenced to                                                                                                               |
|----------------------------------------|----------------------------------------------------------------------------------------------------------------------------|
| U/s 20(b)(ii)(B) of N.D.P.S. Act, 1985 | R.I. for 5 years with fine of Rs. 25,000/-, in default of payment of fine, additional R.I. for 3 months to each appellant. |

2. According to the prosecution case, in brief, on 22.03.2016 at about 15:45 hours, at Naharnala Chowk, Dhamtari, the accused persons were found illegally transporting 5.50 kilograms of narcotic substance (Ganja), which is less than commercial quantity, in a white plastic bag kept on their possession on a Hero Honda HF Deluxe motorcycle, without any license or permit, for the purpose of sale. The prosecution story further states that the Investigating Officer, Assistant Sub-Inspector Ramesh Sahu (PW-10), on 22.03.2016, along with his staff—Head Constables No. 183 and 196, and Constables No. 254, 262, 219, and 777—left for town and rural patrolling and crime investigation in a सरकारी vehicle Sumo bearing registration No. KCG-03/4844. The departure entry was recorded in Sanha No. 04 dated 21.03.2016 at the Police Control Room, Dhamtari, as per Ex.P/30. During the patrol, near Naharnaka, Danitola, Dhamtari, the Investigating Officer received information from an informant that two persons were transporting narcotic substance (Ganja) from Nagari to Dhamtari for illegal sale on a numberless HF Deluxe motorcycle. The information was reduced into writing (Ex.P/3), and an informant panchnama was prepared on the spot in the presence of Head Constable Rakesh Mishra and Prahlad Banchhor. The accused persons were informed that they were suspected of illegally transporting Ganja and that their search was required. They were apprised of their right under Section 50 of the NDPS Act to be searched before a Gazetted Officer or the nearest Magistrate. Notices under Section 50 of the NDPS Act were served upon both accused as per Ex.P/19. The accused declined the offer and gave their written consent to be searched by the Investi-



gating Officer, ASI Ramesh Sahu, as per Ex.P/28. Thereafter, in the presence of witnesses, the accused persons first searched the members of the police party, and no objectionable article was found. A search panchnama of the police party was prepared as per Ex.P/5. Subsequently, the motorcycle of the accused was searched. A white plastic bag kept by accused Dhani Markam, who was seated on the pillion seat, was examined. Upon opening the bag, another white plastic bag was found inside containing a substance resembling Ganja. A search panchnama was prepared as per Ex.P/20. A report of the information was prepared and sent to the DSP, Headquarters, Dhamtari, as per Ex.P/31, through Constable Harish Sahu under duty certificate Ex.P/2. Head Constable Rakesh Mishra was sent under duty certificate Ex.P/4 to summon two independent witnesses. He brought Vijendra Ramteke and Prithvi Sahu, residents of Danitola. They were informed about the information received from the informant and were issued notices under Section 160 CrPC (Ex.P/17) to remain present during the proceedings. A panchnama regarding the non-availability of a search warrant was prepared as per Ex.P/18. A blockade was then established at Naharnaka Chowk. Shortly thereafter, a numberless HF Deluxe motorcycle coming from Nagari Road towards Dhamtari was intercepted. The driver disclosed his name as Hemraj Netam, and the pillion rider carrying the white plastic bag disclosed his name as Dhani Markam, resident of Ravanaguda (Orissa). Upon search, the substance in the white plastic bag emitted a pungent smell. On physical examination by rubbing, smelling, and burning, it appeared to be Ganja. The bag was marked as "A", and an identification panchnama was prepared as per Ex.P/21. An electronic weighing scale was brought and verified by Head Constable Prahlad Banchhor in the presence of witnesses as per Ex.P/15. The recovered Ganja, along with the plastic sack marked "A", was weighed on the spot. The total weight was found to be 5.50 kilograms. Thereafter, the entire seized Ganja was mixed properly. Two samples of 50 grams each were drawn, sealed separately in polythene and cloth packets, and marked as "A-1" and "A-2". The remaining Ganja weighing 4.950 kilograms was



sealed in the original sack marked "A" in the presence of witnesses. A weighing and seizure panchnama was prepared as per Ex.P/16.

3. The learned Special Judge (NDPS) Dhamtari (C.G.), after appreciating oral and documentary evidence available on record vide judgment dated 07.02.2017, convicted the appellants for the offence punishable under Section 20(b)(ii)(B) of the N.D.P.S. and sentenced them as mentioned in opening paragraph of this order.
4. The appellants were in jail from 23.03.2016 to 29.08.2018 (2 years 5 months and 6 days).
5. Learned counsel for the appellant would submit that the appellants are innocent person and have been falsely implicated in the aforesaid case and the mandatory provisions have not been followed by the prosecution. The judgment of the Trial Court is bad in law as well as on facts. The learned Trial Court ought not to have convicted and sentenced the appellants and ought to have given the benefit of doubt since the evidence submitted by the prosecution is very shaky and unbelievable. The Trial Court failed to appreciate the evidence and documents available on record.
6. Learned counsel for the appellants submits that he does not want to press this appeal on merits and confine his arguments to the sentence part thereof only. Further, he submits that the appellant has already undergone 2 years 5 months and 6 days of the sentence awarded by the trial Court. There is also no previous criminal antecedents against the appellant. Therefore, the jail sentence



awarded to the appellants may be reduced to the period already undergone by them.

7. Learned Panel Lawyer appearing for the respondent/State, submits that the Trial Court has rightly convicted and sentenced the appellants, in which no interference is called for.
8. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
9. From perusal of the records it transpires that on 22.03.2016 at about 15:45 hours, near Naharnala Chowk, Dhamtari, the accused Hemraj Netam and Dhani Markam were intercepted while travelling on a numberless HF Deluxe motorcycle. Acting on prior information that they were transporting narcotic substance (Ganja) from Nagari to Dhamtari for illegal sale, the police party, led by Assistant Sub-Inspector Ramesh Sahu (PW-10), established a blockade. The accused were informed of the information received and were apprised of their right under Section 50 of the NDPS Act to be searched before a Gazetted Officer or Magistrate. They declined the offer and consented to be searched by the Investigating Officer. In the presence of independent witnesses, a white plastic bag carried by accused Dhani Markam was searched, and 5.50 kilograms of Ganja (less than commercial quantity) was recovered. Two samples of 50 grams each were drawn, sealed, and marked as A-1 and A-2. The remaining contraband weighing 4.950 kilograms was sealed separately. Necessary seizure, identi-



fication, and weighing panchnamas were prepared on the spot, and the seized articles were taken into custody in accordance with law. After following the due processes, chargesheet was submitted before the learned Special Judge who convicted the appellant under Section 20(b)(ii)(B) of the NDPS Act, 1985. Considering the material available on record and the evidence adduced by the prosecution, I am of the view that the Trial Court did not commit any illegality or infirmity in the findings recorded by Trial Court as regards conviction of the appellant under Section 20(b)(ii)(B) of the N.D.P.S.

10. Therefore, the essence of the above discussion is that the Investigating Officer in this case appears to have followed all the mandatory and directive provisions of the NDPS Act. There is no concrete reason to disbelieve the evidence of the Investigating Officer and other witnesses and the action taken by them. The accused did not produce any valid license or document in relation to the narcotic substance recovered from his possession. Therefore, it is proved that the appellant possessed 5 kg 50 gm of ganja in violation of the provisions of the NDPS Act.
11. As regards the sentence awarded to the appellant. Considering the fact that the appellant is facing criminal trial since 2016, considering the age of the appellants at present and further considering the quantity of contraband seized from the possession of appellants i.e. 5 kg 50 gm contraband(ganja), which is intermediate quantity and there is no previous criminal antecedents and further the ap-



pellants have remained in jail for 2 years 5 months and 6 days, therefore, this Court is of the opinion that in the interest of justice, the sentence imposed upon the appellant is reduced to the period already undergone by the appellants under Section 20(b)(ii)(B). However, fine imposed by trial Court is maintained.

12. With the aforesaid observations, the criminal appeal is **allowed in part**. The appellants are held guilty of committing offence under Section 20(b)(ii)(B) of NDPS Act and is convicted for the said offence. However, the sentence is reduced to the period already undergone by them. The appellants are reported to be on bail. Surety and personal bond earlier furnished at the time of suspension of sentence shall remain operative for a period of six months in view of the provisions of Section 437-A Cr.P.C.
13. Let a copy of this order and the original records be transmitted to the trial court concerned forthwith for necessary information and compliance.

Sd/-

(Arvind Kumar Verma )

**Judge**

Madhurima