



2026:CGHC:880

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 623 of 2024

1 - Ajay Kumar Panchal S/o Shyam Lal, Aged About 27 Years, R/o Village Karahiyana Samthar, P.S. Samthar, District Jhansi (U.P.)

--- Appellant

versus

1 - State of Chhattisgarh Through Station House Officer, P.S. Bemetara, District Bemetara Chhattisgarh.

--- Respondent

CRA No. 691 of 2024

1 - Sujata Bagh W/o Subhash, Aged About 22 Years, R/o Village Disariguda, Police Station Boriguma, District : Koraput, Orissa

---Appellant

Versus

1 - State of Chhattisgarh Through The Police Station, Bemetara, District : Bemetara, Chhattisgarh

--- Respondent

(Cause title taken from Case Information System)

For Appellant : Mr. G.P. Kurre, Advocate (in CRA No.691/2024)
Ms. D. Maity, Advocate (in CRA No.623/2024)

For Respondent/State : Mr. Kalpesh Ruparel, Panel Lawyer

Hon'ble Shri Justice Ravindra Kumar Agrawal, J.

Order on Board

07-01-2026

1. Both these appeals have been listed for hearing today on the application for suspension of sentence and grant of bail, however, with the consent of the parties, the matter has been heard finally.

2. Both these appeals are arising out from the same crime number and same sessions trial, therefore, they are being heard and decided together.

3. Both these appeals have been filed under Section 374(2) of the Cr.P.C. against the judgment of conviction and sentence dated 04-11-2023 passed by the learned Special Judge (NDPS Act), Bemetara in Special Case (NDPS Act) No.03/2022 whereby the appellants have been convicted for the offence under Section 20(b)(ii)(B) of the Narcotics Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act') and sentenced to undergo R.I. for 10 years with fine of Rs.1,00,000/- each and in default of payment of fine, to undergo R.I. for 2 years each.

4. Brief facts of the case are that, on 18-09-2022 the Asst. Sub-Inspector Suresh Kashyap, PW-8, received a secret information that in the passenger bus from Raipur to Jabalpur of Lucky Travels four male and female persons are carrying Ganja in their bags. On receiving the secret information he called the independent witnesses, Tularam Sahu and Goukaran Sahu. The the secret information was informed to the independent witnesses and panchnama was prepared. The secret information panchnama and necessity to search without warrant panchnama was forwarded to SDO(P) Bemetara and they proceeded towards the place of incident. In front of City Kotwali, Bemetara, main road they stopped the Raipur Jabalpur bus of Lucky Travels bearing No.MP 20PA 0464 and when they stopped the bus, two male and two female persons boarded from the bus and walking away. When they were stopped they disclosed their names as Swati Mahara, Sujata Bagh, Ajay Kumar Panchal and Mohammad Farid and that they are residents of different places. They were informed about the secret information and the police persons also gave their own search to them. On being search of the

accused persons, from appellant Swati Mahara, 3.500 kg., from accused Sujata Bagh 4.300 kg., from accused Ajay Kumar Panchal 4.900 kg. and from accused Mohammad Farid 3.500 kg. contraband was seized which was duly identified on the spot by rubbing, smelling and taste and it was found to be Ganja. Various panchnamas were prepared on the spot. The notice under Section 91 of NDPS Act being served upon them, they could not produce any document with respect to possession of the alleged Ganja. The Ganja was seized and it was weighed on the spot through electronic weighing apparatus through by weighment witness Ajit Singh Rajput. The total quantity of Ganja came to 16.200 kg. and two separate sample of 50 gram each were drawn and separately sealed. Dehati Nalisi was recorded on the spot and accused persons, seized Ganja and other articles were taken to police station where FIR was registered and Ganja and other seized articles were kept in safe custody of Malkhan. The sample packets of Ganja were sent to FSL for its chemical examination and after receiving the FSL report it confirms the presence of Ganja in the sample packets. Thereafter, during investigation involvement of other accused persons was found, but they were absconding, therefore, the charge sheet was filed against the present appellants for the offence under Section 20(b)(ii)(B) of the NDPS Act before the learned trial Court. The trial court framed charge for the offence under Section 20(b)(ii)(B) of the NDPS Act against the appellants. They denied the charge and claimed trial.

5. In order to prove the charge, the prosecution has examined as many as 21 witnesses. Statement of appellants under Section 313 CrPC were also recorded in which they denied the circumstances appearing against them,

plead innocence and submitted that they have been falsely implicated in the offence.

6. After appreciation of oral as well as documentary evidence led by the prosecution, the Trial Court has convicted the appellants for the offence under Section 20(b)(ii)(B) of the NDPS Act and sentenced them as mentioned in the earlier part of this judgment. Hence, these appeals.

7. Learned counsels appearing for the appellants would submit that the appellants are not challenging their conviction, however, looking to the quantity of Ganja which was seized from them; their age and socio economical condition and that they are in jail since 18-09-2022 and thereby they have already undergone more than three years of jail sentence; the alleged offence of Section 20(b)(ii)(B) of the NDPS Act does not provide any minimum sentence, their sentence may be reduced to the period already undergone by them.

8. On the other hand, the counsel for the State vehemently opposes and has submitted that looking to the gravity of the offence and the manner in which the Ganja seized from them and the impact upon the society of the offence by such nature of offence, the appellants are not entitled for any leniency.

9. I have heard the counsel for the parties and perused the record of trial court.

10. Though the appellants are not challenging their conviction, however, this Court deems it appropriate to consider the evidence available on record against them.

11. PW-8, Suresh Kashyap is the Investigating Officer who was posted as Sub-Inspector of Police at P.S. Nandghat, Out Post Maro. He stated in his evidence that on 18-09-2022 he received a secret information that in Raipur Jabalpur bus two male and two female persons are carrying Ganja. The secret information was informed through letter Ex.-P/14 to the SDO(P) Bemetara and two witnesses Tularam Sahu and Goukaran Sahu were called through Constable Rajesh Dhruv as independent witnesses. The notice to the independent witnesses were also issued which is Ex.-P/17 and prepared secret information panchnama Ex.-P/18. Necessity to search without warrant panchnama Ex.-P/19 was also prepared and thereafter, the police party proceed towards place of incident. At about 08:45 a.m. Raipur Jabalpur bus of Lucky travels bearing No.MP 20PA 0464 came in front of the city kotwali, Bemetara main road. When they stopped the bus two male and two female persons deboarded from the bus and walking away. When they stopped they disclosed their names Swati Mahara, Sujata Bagh, Ajay Panchal and Mohammad Farid Khan. All of them were informed about the secret information and they were informed their right to be searched from any Gazetted Officer, any Magistrate or by himself. Then the accused persons gave their consent to be searched by police and panchnama Ex.-P/20 to P/24 were prepared. The police party were also gave their own search, but nothing incriminating were found in their search and panchnama Ex.P/25 was prepared. On being search of accused persons from Swati two packets wrapped with brown brown colour cello tape and one mobile phone, from Sujata Bagh two packets wrapped with brown brown colour cello tape and one mobile phone, from accused Ajay two packets wrapped with brown colour cello tape and from accused Mohammad Farid two packets wrapped with brown colour cello tape and one mobile phone and Rs.1000/- cash have

been recovered and talashi panchnama Ex.-P/26 and P/27 were prepared. The contents of the recovered contraband from accused persons were verified by rubbing, smelling and burning and it was found to be Ganja and panchnama Ex.-P/28 to P/31 were prepared and identification panchnama is Ex.-P/32. The weighment witness Ajit Singh Rajput was called, the electronic weighment apparatus were physically verified and panchnama Ex.-P/35 was prepared. The seized Ganja were homogenized on the spot and homogenization panchnama Ex.-P/36 to Ex.-P/39 were prepared. On being weighed weight of the Ganja recovered from Swati was found 3.500 kg., recovered from accused Sujata was found 4.300 kg., recovered from Ajay Panchal was found 4.900 kg. and recovered from accused Mohammad Farid was found 3.500 kg. and the weighment panchnamas Ex.-P/40 to P/43 were prepared. Two samples of 50 gram each from each packets were separated and separately sealed and samras panchnama Ex.-P/44 to P/47 were prepared. Seal panchnama Ex.-P/48 to P/51 are also prepared. When a notice under Section 91 of the Cr.P.C. was served upon them, they could not produce any document with respect to possession of the Ganja. Thereafter, the Ganja, their mobile phones and cash of Rs.1000/- were seized vide seizure memo Ex.-P/56 to P/59. Spot map Ex.-P/60 was prepared and Dehati Nalisi Ex.-P/61 was recorded on the spot. Accused persons were arrested and they were taken to police station along with the seized articles. The memorandum statement of Mohammad Farid and Sujata were recorded which are Ex.-P/66 and P/67. In their memorandum statement they also disclosed about the involvement of other accused persons Manbodh, Ravi and Lucky Chouhan. Thereafter, the FIR Ex.-P/68 was registered. The statement of the witnesses were recorded, seized articles were kept in safe custody of Malkhana and the details of the proceeding were informed to the

Superintendent of Police, Bemetara and SDO(P), Bemetara along with the letter Ex.-P/70 and thereafter, he handed over the case diary for further investigation to the SHO.

In cross-examination the defence could not abstract any material so that evidence of this witness could be disbelieved or any discrepancy could be pointed out. This witness remained firm in entire search and seizure proceeding which he conducted on the spot and nothing in his statement to disbelieve him. The independent witnesses Tularam Sahu PW-15 and Gaukaran Sahu PW-16 have also supported the entire search and seizure proceeding and their signature over the documents which have been prepared during the search and seizure. Their evidence are also supported the evidence of PW-8, the Investigating Officer.

12. PW-18 Rajkumar Maravi is the Executive Magistrate who conducted the inventory Ex.-P/78 and proved the entire proceeding of inventory and in cross-examination nothing is there to disbelieve him or any discrepancy in the inventory proceeding.

13. The weighment witness Ajit Singh Rajput, PW-20 has also supported the prosecution's case that he weighed the Ganja seized from the accused persons and signed the panchnama prepared by the police.

14. From the FSL report Ex.-P/81 it was found that sealed packets which were drawn from the Ganja seized from the accused persons were contained with Ganja.

15. Therefore, this Court does not find any infirmity or perversity in the conviction of the appellants for the offence under Section 20(b)(ii)(B) of the NDPS Act.

16. So far as the sentence awarded to the appellants are concerned, In the matter of **Mohammad Giasuddin Vs. State of Andhra Pradesh** reported in (1977) 3 SCC 287 Hon'ble Supreme Court has observed that If you are to punish a man retributively, you must injure him. If you are to reform him, you must improve him and, men are not improved by injuries and held in Para 9 as follows:

“9. Western jurisprudes and sociologists. from their own angle have struck a like note. Sir Samuel Romilly, critical of the brutal penalties in the then Britain, said in 1817 : “The laws of England are written in blood”. Alfieri has suggested : 'society prepares the crime, the criminal commits it'. George Nicodotis, Director of Criminological Research Center, Athens, Greece, maintains that 'crime is the result of the lack of the right kind of education'. If it is thus plain that crime is a pathological aberration. that the criminal can ordinarily be redeemed. that the State has to rehabilitate rather than avenge. The sub-culture that leads to anti-social behaviour has to be countered not by undue cruelty but by reculturation. Therefore, the focus of interest in penology is the individual, and the goal is salvaging him for society. The infliction of harsh and savage punishment is thus a relic of past and regressive times. The *human* today views sentencing as a process of reshaping a person who has deteriorated into criminality and the modern community has a primary stake in the rehabilitation of the offender as a means of social defense. We, therefore, consider a therapeutic, rather than an 'in terrorem' outlook, should prevail in our criminal courts. since brutal incarceration of the person merely produces laceration of his mind. In the words of George Bernard Shaw : 'If you are to punish a man retributively, you must injure him. If you are to reform him, you must improve him and, men are not improved by injuries'. We may permit ourselves the liberty to quote from Judge Sir Geoffrey Streatfield : “If you are going to have anything to do with the criminal Courts, you should see for yourself the conditions under which prisoners serve their sentences'.”

17. Further, in the matter of **Raj Bala Vs. State of Haryana & Others**, reported in 2016 (1) SCC 463 in paragraph 1 & 2 the Hon'ble Supreme Court has held as under :

"1. In Gopal Singh v. State of Uttarakhand[(2013) 7 SCC 545 : (2013) 3 SCC (Cri) 608], while focusing on the gravity of the crime and the concept of proportionality as regards the punishment, the Court had observed:-

"18. Just punishment is the collective cry of the society. While the collective cry has to be kept uppermost in the mind, simultaneously the principle of proportionality between the crime and punishment cannot be totally brushed aside. The principle of just punishment is the bedrock of sentencing in respect of a criminal offence. A punishment should not be disproportionately excessive.

The concept of proportionality allows a significant discretion to the Judge but the same has to be guided by certain principles. In certain cases, the nature of culpability, the antecedents of the accused, the factum of age, the potentiality of the convict to become a criminal in future, capability of his reformation and to lead an acceptable life in the prevalent milieu, the effect - propensity to become a social threat or nuisance, and sometimes lapse of time in the commission of the crime and his conduct in the interregnum bearing in mind the nature of the offence, the relationship between the parties and attractability of the doctrine of bringing the convict to the value-based social mainstream may be the guiding factors. Needless to emphasise, these are certain illustrative aspects put forth in a condensed manner. We may hasten to add that there can neither be a straitjacket formula nor a solvable theory in mathematical exactitude. It would be dependent on the facts of the case and rationalised judicial discretion. Neither the personal perception of a Judge nor self-adhered moralistic vision nor hypothetical apprehensions should be allowed to have any play. For every offence, a drastic measure cannot be thought of. Similarly, an offender cannot be allowed to be treated with leniency solely on the ground of discretion vested in a court. The real requisite is to weigh the circumstances in which the crime has been committed and other concomitant factors which we have indicated hereinbefore and also have been stated in a number of pronouncements by this Court. On such touchstone, the sentences are to be imposed. The discretion should not be in the realm of fancy. It should be embedded in the conceptual essence of just punishment."

[Emphasis supplied]

2. Seven years prior to that, in Shailesh Jasvantbhai v. State of Gujarat [(2006) 2 SCC 359 : (2006) 1 SCC (Cri) 499], it has been held that:- (SCC pp. 361-62, paras 7-8)

"7. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of "order" should meet the challenges confronting the society.

Friedman in his Law in Changing Society stated that:

"State of criminal law continues to be-as it should be-a decisive reflection of social consciousness of society." Therefore, in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the

nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.

8. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law, and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc. This position was illuminatingly stated by this Court in *Sevaka Perumal v. State of T.N.* [(1991) 3 SCC 471 : 1991 SCC (Cri) 724]"

[Emphasis supplied]

And again: (SCC p. 363, para 13)

"13....The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and the victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal"."

18. Considering the totality of the circumstances in which the Ganja has been seized from the appellants, the case of the accused persons, their socio economical condition as stated by the learned counsels for the parties and further considering that the offence of Section 20(b)(ii)(B) of the NDPS Act does not provide any minimum sentence, further that the appellants are in jail since 18-09-2022, this Court deems it proper to reduce the sentence awarded to the appellants to the period already undergone by them.

19. Accordingly, the jail sentence awarded to the appellants are reduced for the period already undergone by them. The fine sentence awarded to the appellants are also reduced that each of these appellants shall pay the fine of Rs.15,000/- instead of Rs.1,00,000/- and default sentence is also modified and instead of R.I. for two years, they shall undergo R.I. for three months in default of payment of fine amount of Rs.15,000/- as imposed by this Court.

20. With the aforesaid modifications and reduction of the sentence, both these appeals are **partly allowed**. The appellants are reported to be in jail since 18-09-2022, they be released forthwith, if not required in any other case subject to compliance of fine sentence awarded by this Court.

Sd/-
(**Ravindra Kumar Agrawal**)
Judge