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NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 608 of 2019

1 - Tikaram S/o Dheluram Yadav Aged About 29 Years R/o Village Mohbhatha, Out Post Sargaon, Police Station Pathariya, District Mungeli Chhattisgarh.

2 - Sarwan @ Ballu Yadav S/o Daduram Yadav Aged About 40 Years R/o Village Hathkera, Police Station Pathariya, District Mungeli Chhattisgarh.

3 - Vishnu Sahu S/o Baisakhu Sahu Aged About 50 Years R/o Village Mohbhatha, Out Post Sargaon, Police Station Pathariya, District Mungeli Chhattisgarh.

... Appellants

versus

State Of Chhattisgarh Through Station House Officer, Police Station Pathariya, District Mungeli Chhattisgarh

---- Respondent

For Appellants : Mr. Kanhaiya Ram Yadav, Advocate

For State/Respondent : Mr. Suresh Tandan, PL

Hon'ble Shri Justice Arvind Kumar Verma

Judgment on Board

23/03/2026



1. This criminal appeal has been preferred by the appellants under Section 374(2) of CrPC being aggrieved with the judgment of conviction and order of sentence dated 26.03.2019 (Annexure A-1) passed in Special Criminal Case No.13/2016 by the Special Judge (NDPS), Mungeli (C.G.), whereby the trial Court has convicted the appellants as under :

Conviction	Sentence	In Default
Under Section 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985	R.I. for 03-03 years and fine amount of Rs.15,000-15,000/-	In default of payment of fine amount further R.I. for 06-06 months

2. A PUD received from the Special Judge (Narcotics Act), Mungeli (C.G.) dated 10.03.2026. By the said PUD, the Special Judge has informed this Court that appellant No.3 – Vishnu Sahu S/o Baisakhu Sahu has died on 30.03.2024. Death certificate is also placed on record in which it is specifically mentioned that appellant No.3 – Vishnu Sahu has died on 30.3.2024.
3. 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.3- Vishnu Sahu within a period of 30 days from the date of death of appellant No.3, this appeal is abated on his behalf. Now, this Court proceed to here the appeal on behalf of



Appellants No.1 & 2 only.

4. According to the case of prosecution is that on 19.02.2016, Station House Officer, Police Station - Pathriya namely P.R. Jagat (P.W.-13) received a secret information from the informant that appellant No.1- Tikaram along with his friends is going towards Hathkera by a motorcycle who are having Ganja and they are trying to sell the Ganja.
5. On the basis of aforesaid information the Investigating Officer along with staff of Police Station - Pathriya approached at the incident place at Village Bhathapara, near Hathkera turning where 3 persons were seen by the police who were riding on motorcycle. The consent was taken for search and the Police Party conducted raid and one bag was found to be in possession of the appellant no. 1 Tikaram in which 4 packets of Ganja were kept. The panchnama was prepared after recognition of the psychotropic substance which was kept in a nylon bag. The total quantity of the ganja was 4 kg and 20 gm. After some other formalities of investigation were conducted by the prosecution and thereafter, the ganja about 4kg 20 gm, a red and silver colour motor cycle from the possession of co-accused Shrawan were seized and appellants were arrested and first information report on zero under section 20(B) of NDPS



was recorded at the place of incident. The police registered the offence as crime no. 45/2016, samples were sent to forensic science laboratory for examination and thereafter after completion of the entire investigation Charge Sheet has been filed before the learned Special Judge under Narcotic Drugs and Psychotropic Substances Act.

6. The charges were framed against the appellants under section 20(b)(ii)(B) of NDPS. The appellants denied the charge and pleaded false implication. The accused appellant stated in statement under Section 313 of CrPC that they are innocent and not committed any offence and did not produce any witness in their defense.
7. The trial Court after trial found the appellant guilty and convicted and sentenced them as mentioned herein above. Hence, this appeal.
8. Learned counsel appearing on behalf of the appellants 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 2016 and they are facing */is* since 2016. Appellants have undergone about 05 months and 02 days, therefore, it is prayed that the jail sentence



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

9. Per contra, learned counsel for the State/respondent opposes the argument raised by counsel for the appellants, supported the impugned judgment and submits that sentence awarded by the trial Court is just and proper and requires no interference.
10. I have heard learned counsel appearing on behalf of the parties and perused the material available on record with utmost circumspection.
11. On perusal of the records, I have found that on 19.02.2016, Station House Officer, Police Station - Pathriya namely P.R. Jagat (P.W.-13) received a secret information from the informant that appellant No.1- Tikaram along with his friends is going towards Hathkera by a motorcycle who are having Ganja and they are trying to sell the Ganja. On the basis of said information, the police have seized total 04 kg and 20 gram of Ganja from the possession of the appellants. After due procedure, the appellants were arrested, and offence was registered against the accused and after due investigation charge sheet was filed against the accused/appellants.
12. Under Section 42 of the NDPS Act, 1985 prescribed for power



of entry, search, seizure and arrest without warrant or authorization.

13. 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.”

14. 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.

15. 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 appellants 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.
16. 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 04 Kg 20 gram in total; they have already undergone about 05 months and 02 days out of the period of 03 years sentence imposed upon them 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 appellants, the jail sentence awarded to them is reduced to the period already undergone by them. The fine amount imposed by the learned trial Court shall remain intact. If the fine amount is not deposited by the appellants, they shall further undergo as has been ordered by the learned trial Court. Ordered accordingly.



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17. 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