



2026:CGHC:12985

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 945 of 2018

Dashrath Yadav S/o Bhagirathi Yadav Aged About 36 Years Occupation Agriculture, R/o Village Diyagarh, Police Station Lailunga, District Raigarh, Chhattisgarh

--- Appellant

versus

State of Chhattisgarh Through Station House Officer, Police Station Tamnar, District Raigarh, Chhattisgarh

--- Respondent

CRA No. 923 of 2018

1 - Munna Yadav S/o Gopal Yadav Aged About 24 Years Occupation Agriculturist R/o Village Kaharchuwa, Police Station Lailunga, District Raigarh Chhattisgarh

2 - Ajju Kumhar S/o Shri Jaleshwar Kumhar Aged About 23 Years Occupation Agriculturist R/o Village Kaharchuwa, Police Station Lailunga, District Raigarh Chhattisgarh Permanent Address R/o Village Guchhapada, Police Station Baliguda District Kandyal Orissa

---Appellants

Versus

State of Chhattisgarh Through: Station House Officer, Police Station Tamnar District Raigarh Chhattisgarh

--- Respondent

For Appellants	:	Mr. Shrestha Gupta, Advocate through Legal Aid
----------------	---	--



For Respondent/State : Ms. Avelin Juneja Gambhir, PL

(Hon'ble Shri Justice Arvind Kumar Verma)

Judgment on Board

18/03/2026

1. Today when the matter is called out for hearing, no one appeared on behalf of the appellants, I therefore requested for assistance from a counsel of the High Court Legal Aid Services Committee, Mr. Shrestha Gupta, Advocate has been nominated to assist the Court.
2. I have gone through the judgment under appeal and the depositions of witnesses and exhibits assisted both by Advocate, Mr. Shrestha Gupta through the High Court Legal Aid Services Committee and learned State counsel. In view of law laid down by the Hon'ble Supreme Court in the matter of *Surya Baksh Singh v. State of Uttar Pradesh* {(2014) 14 SCC 222}, I do not consider it necessary to adjourn this case and issue fresh notice to the appellant and his interest has been duly taken care of by nominating another counsel from the High Court Legal Aid Services Committee.
3. Both these criminal appeals are being heard and decided together as the common thread passes through.
4. These Criminal Appeals have been preferred by the appellants under Section 374 (2) of the Code of Criminal Procedure is directed against the impugned judgment dated 18/05/2018 passed by the Special Judge NDPS Act, Raigarh, District Raigarh, C.G. in Special NDPS Case No.5/2016 whereby the appellants have been convicted and sentenced as



under:-

Conviction	Sentence
Under Section 20 (b) (II) (B) of the NDPS Act, 1985	R.I. for 05 Years and fine of Rs.10,000/- (each appellant) and in default of payment of fine 01 Years additional R.I.

5. The case of the prosecution in brief is that on 10/02/2016, Inspector Sushma Chelak of Police Station Tamnar received information from an informer that three persons are coming from Lailunga side through the unpaved road of village Pelma Tilaipali in a white colour car bearing registration number CG-13 C/6200 to sell narcotic substance Ganja. He recorded the above information in the Roznamcha Sanha Ex.P.-27 and called two witnesses, weigher and weighing equipment to the police station. Informer Information Panchnama was prepared. Notice was issued to the witnesses present for the proceedings. Informer's information was sent to SDOP office Gharjagarh, Inspector Sushma Chelak along with her staff and colleagues went towards village Pelma, reached the place as informed by the informer, cordoned off the area and stopped white Hyundai car number CG-13 C/6200 coming from Pelma towards Lalunga. Accused Dashrath was driving the vehicle, accused Ajju was sitting next to the vehicle and accused Munna Yadav was sitting in the rear seat of the vehicle. On being questioned, they told that they had kept the narcotic substance ganja hidden in a sack in the trunk of the car.
6. Before the search was conducted, Inspector Sushma Chelak informed the accused about their legal rights and served them a notice under Section



50 of the Act (Ex.P.-5), and they consented to the search. On searching the car number CG-13C/6200, 8 plastic packets of narcotic substance like Ganja were recovered from a jute sack in the rear trunk of the vehicle and a recovery panchnama (Ex.P.-14) was prepared. After physical verification of the scales and weights brought by the weigher, a panchnama (Ex.P.-16) was prepared. The recovered substance was identified in front of witnesses and its panchnama and a comprehensive panchnama were prepared. On weighing the material by the weigher, the weight of Ganja was found to be 08 kg, out of which after taking out 100-100 grams as a sample separately, a weighing panchanama (Ex.P.-19) was prepared. The accused were made to pay a heavy price for the drugs (Ex.P.-20). A map of the incident spot was prepared. The recovered drugs Ganja and the missing car were sent to the storehouse for safekeeping. Information regarding the action of SDOP Dharamjaigarh was sent. A First Information Report (Ex.P.-44) was registered against the accused. They were arrested and arrest papers were issued. Statements of witnesses were recorded. As per the test report of the Regional Forensic Science Laboratory (Ex.P.-51), the samples sent were found to be Ganja. After other necessary investigation proceedings, a charge sheet was filed against the accused under Section 20-V of the NDPS Act.

7. The accused denied the charge under Section 20 (b) (II) (B) of the Act and claimed trial. Even when the accused were examined under Section 313 CrPC, they declared themselves innocent, however, no defence witness was examined on behalf of the accused.



8. The prosecution examined a total of 12 witnesses to prove its case. (PW-2) Tikam Sidar and (PW-3) Kushran Bhagat are independent witnesses to the seizure memo and all important proceedings. They have not supported the prosecution and have not admitted anything other than their signatures on the proceedings. (PW-1) Bhupesh Kumar, (PW-4) Bhuneshwar Sidar and (PW-9) Biharilal Hamrah are constable witnesses. (PW-11) Sushma Chelak is the investigating officer in the case. (PW-5) Vidyadhar, (PW-6) Kanhaiya Khute, (PW-7) Kuldeep Patel, (PW-8) Jhasketan Singh and (PW-10) D.S. Vishwas are witnesses to other proceedings.
9. The learned trial Court after evaluating the facts & evidence convicted the accused as aforesaid. Hence this appeal.
10. Learned counsel appearing for the appellants submit that he is not pressing this appeal on merits and confining the arguments to the quantum of sentence only. It is respectfully submitted that all the appellants have already undergone a substantial period of incarceration during the pendency of the trial. As is evident from the impugned judgment itself, the appellants remained in judicial custody for approximately 828 days. The said period of detention is duly reflected from the record and has not been disputed by the prosecution. It is further submitted that thereafter the appellants were released on bail and have duly complied with all conditions without any misuse of liberty. Thus, considering the long period already undergone by the appellants, coupled with the facts and circumstances of the case, it is prayed that the substantive sentence of



imprisonment may kindly be reduced to the period already undergone.

11. *Per contra*, learned State counsel would submit that the judgment of the trial Court is well merited which do not call for any interference.
12. I have heard learned counsel for the parties and perused the entire record of the case, including the oral and documentary evidence adduced by the prosecution, the findings recorded by the learned Special Judge, as well as the submissions advanced on behalf of the appellants.
13. The prosecution case, in brief, is that on the basis of prior information received by the police, the appellants were intercepted while travelling in a vehicle bearing registration No. C.G. 13-C/6200, and upon search, contraband (ganja) was recovered from the said vehicle. The contraband was seized, samples were drawn, and after due investigation, charge-sheet was filed leading to conviction of the appellants under Section 20(b)(ii)(B) of the NDPS Act.
14. At the outset, it is to be examined whether the prosecution has been able to prove the factum of recovery and seizure of contraband beyond reasonable doubt. The seizure witnesses and the Investigating Officer have consistently deposed regarding the interception of the vehicle, search conducted, and recovery of ganja from the vehicle. Their statements inspire confidence and remain unshaken in material particulars. The defence has not been able to demonstrate any major contradiction or omission so as to discredit their testimony. The seizure memo and other contemporaneous documents duly support the oral



evidence.

15. So far as compliance of statutory provisions under the NDPS Act is concerned, it is evident from the record that prior information was reduced into writing and necessary entries were made in the rojnamcha. The information was also communicated to superior officers, thereby indicating compliance of the mandate akin to Section 42 of the NDPS Act. The defence has not been able to point out any material violation which may vitiate the trial.
16. With regard to Section 50 of the NDPS Act, from the record it appears that the recovery in the present case was effected from a vehicle and not from the personal search of the appellants. It is well settled that the provisions of Section 50 are applicable only in case of personal search and not to search of a vehicle or bag/container. Therefore, non-compliance of Section 50, as argued by the defence, does not affect the prosecution case.
17. The prosecution has further established the safe custody and proper handling of the seized contraband. The samples were drawn on the spot, sealed, and sent for chemical examination. The FSL report confirms that the seized substance was ganja. There is no material to suggest tampering with the samples or break in the chain of custody. The link evidence stands duly proved. The quantity of contraband recovered falls within the ambit of intermediate quantity, thereby attracting the provisions of Section 20(b)(ii)(B) of the NDPS Act. The learned trial Court has rightly appreciated the evidence in this regard.



18. The contention of the defence regarding non-examination of independent witnesses has also been considered. It is settled law that merely because independent witnesses have not supported the prosecution or have not been examined, the testimony of official witnesses cannot be discarded if found reliable and trustworthy. In the present case, the official witnesses have given consistent and cogent evidence, and there is no reason to disbelieve them.
19. The conscious possession of the contraband by the appellants is also established from the circumstances on record. The contraband was recovered from the vehicle in which the appellants were travelling, and no plausible explanation has been offered by them regarding such possession. In absence of any rebuttal, the presumption under the NDPS Act operates against the appellants. This Court also finds that the investigation, though not flawless, does not suffer from any such illegality or irregularity which may go to the root of the prosecution case. Minor discrepancies or procedural lapses, if any, do not affect the core of the prosecution story.
20. Upon cumulative consideration of the entire evidence, this Court is of the considered opinion that the prosecution has successfully proved its case beyond reasonable doubt. The findings recorded by the learned trial Court are based on proper appreciation of evidence and do not call for interference. Accordingly, the conviction of the appellants under Section 20(b)(ii)(B) of the NDPS Act is hereby affirmed and maintained.
21. Having affirmed the conviction of the appellants under the relevant



provisions of the NDPS Act, this Court now proceeds to consider the question of sentence. From the record, it is evident that the appellants have already undergone a substantial period of incarceration. As reflected from the impugned judgment itself, the appellants remained in judicial custody for approximately 828 days during the course of trial. The said period of detention is significant and cannot be ignored while considering the proportionality of sentence.

22. It is further noteworthy that the appellants are not shown to be habitual offenders, and there is no material available on record indicating any previous criminal antecedents. The appellants have already faced the rigours of criminal prosecution for a considerable period. Moreover, after their release on bail, there is nothing on record to suggest that they have misused the liberty granted to them. The learned trial Court has also imposed a fine upon the appellants, which has been deposited. Thus, the punitive as well as deterrent elements of sentencing have already been substantially satisfied.
23. In the considered opinion of this Court, the ends of justice would be adequately met if the sentence of imprisonment awarded to the appellants is modified to the period already undergone by them. Accordingly, while maintaining the conviction of the appellants under Section 20(b) (ii) (B) of the NDPS Act, the sentence of imprisonment imposed by the trial Court is reduced to the period already undergone (approximately 828 days) by the appellants. The fine amount, shall remain intact.



24. Consequently, this appeal stands **allowed in part** to the extent indicated herein-above.
25. Appellants are on bail. Their 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

ashu