



2026:CGHC:3943



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**NAFR**

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**CRA No. 439 of 2017**

1 - Jamil Khan S/o Shakil Khan, Aged About 50 Years R/o Sunder Nagar, Gondia, Police Station City Kotwali, Gondia, District Gondia Maharashtra., Maharashtra

**...Appellant(s)**

**versus**

1 - State Of Chhattisgarh Through Station House Officer, Police Station Bhimkhoj, District Mahasamund, Chhattisgarh., Chhattisgarh

**... Respondent(s)**

|                      |   |                              |
|----------------------|---|------------------------------|
| For Appellant (s)    | : | Ms. Poornima Singh, Advocate |
| For Respondent/State | : | Shri Vivek Mishra, PL        |

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

**Judgment on Board**

**22/01/2026**

This appeal under Section 374 of the Code of Criminal Procedure has been filed being aggrieved by the impugned judgment of conviction and order of sentence dated 06.03.2017 passed by the Special Judge (NDPS Act), Mahasamund in Special Criminal Case No.15/2016



whereby and whereunder the appellants have been held guilty for commission of the offence under Section 20(b)(ii)(B) of the NDPS Act and sentenced each of them to undergo RI for three years with fine of Rs. 10,000/-, in default of payment of fine to further undergo RI for six months on each count.

2. When the matter was called out today, none appeared on behalf of the appellant. In the circumstances, this Court deems it appropriate to proceed with the hearing of the appeal by appointing a counsel through the High Court Legal Services Committee.

3. Accordingly, Ms. Poornima Singh, Advocate, empanelled Legal Aid Counsel, is appointed to represent the appellant and to argue the appeal on his behalf. The Secretary, High Court Legal Services Committee, is directed to issue the requisite authorization letter in her favour.

4. This Court has perused the judgment under appeal, the depositions of the prosecution witnesses and the documentary evidence on record, with the assistance of the learned Legal Aid Counsel and the learned State Counsel. In view of the law laid down by the Supreme Court in ***Surya Baksh Singh v. State of Uttar Pradesh, (2014) 14 SCC 222***, this Court does not find it necessary to adjourn the matter or to issue fresh notice to the appellant, as his interests have been adequately safeguarded by the appointment of a Legal Aid Counsel.



5. The prosecution case, as unfolded during trial, is that on 28.03.2016, the complainant and Investigating Officer, namely Champa Lal Jureshiya, Assistant Sub-Inspector, posted at Police Station Bhimkhoj, District Mahasamund, received a secret information from informer that one person was carrying ganja in a black coloured bag and was proceeding towards Mahasamund for the purpose of sale. Upon receiving the said information, the Investigating Officer reduced the information into writing in the Rojnamcha Sanha and informed the superior officers. Thereafter, independent witnesses were called and informed about the proposed action. Considering the urgency of the situation and the likelihood of the suspect escaping, the police party decided to proceed immediately without obtaining a search warrant.

6. The Investigating Officer, along with other police personnels and independent witnesses, proceeded towards M.K. Bahara Chowk, Bhimkhoj, where after some time, they noticed a person coming from the direction of Bhimkhoj carrying a black coloured bag. The said person was stopped and on inquiry disclosed his identity as the present appellant. The appellant was informed about the information received against him and was apprised of his search. A notice was issued to him, informing that he had the right to be searched before a Gazetted Officer or Magistrate. The appellant expressed his willingness to be searched by the police officers present at the spot and gave his consent in writing.

7. Thereafter, in presence of witnesses, the search of the appellant and the bag carried by him was conducted. On opening the bag, a



greenish-brown leafy substance resembling ganja was found. On preliminary examination by sight, smell and touch, the substance was identified as ganja.

8. The recovered contraband was weighed on the spot using a weighing scale brought by the police. The total weight of the seized ganja was found to be 5 kilograms. From the seized contraband, samples were drawn in accordance with procedure. The samples were properly sealed and marked. The remaining contraband was also sealed with the seal of the police. A seizure memo was prepared on the spot in presence of witnesses. The seized articles, sample packets, and relevant documents were duly sealed. The accused was arrested at the spot. and informed of the grounds of arrest. The arrest memo and other necessary documents were prepared.

9. After completion of the proceedings at the spot, the police party returned to the Police Station Bhimkhoj along with the accused and seized articles. First Information Report was registered at the police station vide Crime No. 52/2016 for the offence punishable under Section 20(B)(ii)(b) of the NDPS Act. The seized contraband and sample packets were deposited in the Malkhana of the police station and entries were made in the Malkhana register. Subsequently, the sample packets were forwarded to the Forensic Science Laboratory for chemical examination. The Forensic Science Laboratory, after examination of the samples, submitted its report confirming that the seized substance was ganja, a narcotic drug within the meaning of the NDPS Act.



10. During the course of investigation, statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. After completing the investigation and fulfilling the formalities required under the NDPS Act, the Investigating Officer filed a charge-sheet before the competent Court against the appellant for commission of offence under Section 20(B)(ii)(b) of the NDPS Act.

11. The learned Trial Court framed charges against the appellant. The appellant pleaded not guilty and claimed to be tried. The prosecution examined 08 witnesses and exhibited documentary evidence. Upon appreciation of the evidence on record, the learned Trial Court found the appellant guilty and convicted him for the aforesaid offence and imposed the sentence as mentioned hereinabove. Hence this appeal.

12. Learned counsel for the appellant assailed the impugned judgment primarily on the ground that the learned Trial Court failed to properly appreciate the evidence on record and ignored material contradictions, procedural lapses and non-compliance of mandatory provisions of the NDPS Act. It is contended that the prosecution has failed to establish the guilt of the appellant beyond reasonable doubt and the conviction recorded by the Trial Court is unsustainable in law. It is submitted that the alleged recovery of ganja from the appellant is doubtful and not proved in accordance with law. The prosecution case rests mainly on the testimony of police witnesses, while the independent witnesses did not support the prosecution case.

13. PW-1 and PW-2, Tukesh Kumar Sahu and Hemant Yadav, the



independent witnesses to the seizure and search proceedings, have turned hostile and did not support the prosecution version regarding recovery and weighing of the contraband substance. Their evidence clearly creates a serious dent in the prosecution story. It is further submitted that the prosecution has failed to prove that the said contraband was recovered from the conscious possession of the appellant. Mere physical possession, without proof of conscious possession, is insufficient to attract the offence under Section 20 of the NDPS Act.

14. Learned counsel for the appellant pointed out that there are material contradictions and inconsistencies in the statements of prosecution witnesses.

PW-3 (the complainant and Investigating Officer) has stated that the information was received from a mukhbir and that the search was conducted without obtaining a search warrant on the apprehension of the accused absconding. However, the prosecution failed to prove that the information was reduced into writing as required under Section 42 of the NDPS Act. PW-4 (Suresh Tandi) and PW-5 (Manoj Kumar Tiwari) police personnels gave contradictory versions regarding the place of interception, the time of search, and the procedure adopted for weighing and sealing the contraband substance. There are also inconsistencies regarding the preparation of seizure memo (Exhibit P/7), notice to the accused under Section 50 of the NDPS Act (Exhibit P/2), and the consent of the accused for search by police officers (Exhibit P/3).

15. It is submitted that the mandatory requirement of Section 42 of the



NDPS Act has not been complied with. Though the prosecution claims that information was received from a mukhbir, there is no reliable evidence to show that the same was reduced into writing and forwarded to the superior officer within the stipulated time. The prosecution has relied upon Rojnamcha Sanha and Panchanama, but these documents do not satisfy the mandatory requirement of Section 42 of the NDPS Act.

16. It is argued that the provisions of Section 50 of the NDPS Act were not properly complied with. The notice allegedly given to the appellant was mechanical and not in meaningful compliance with law. The appellant was not informed of his legal right to be searched before a Gazetted Officer or Magistrate in a proper and effective manner. The consent memo (Exhibit P/3) is a stereotyped document prepared by the police and does not inspire confidence.

17. It is further submitted that the provisions of Sections 52 and 57 of the NDPS Act were also not strictly complied with. The prosecution has failed to prove that the seized contraband was properly sealed, deposited in the Malkhana and forwarded to the FSL without delay. The Malkhana register and forwarding memo suffer from discrepancies. Learned counsel for the appellant submits that the procedure of weighing and sampling of the alleged contraband was not carried out in accordance with law. The prosecution witnesses have given inconsistent statements regarding the weighing of the contraband. While one witness has stated that the weighing was done on the spot, another witness



stated that the weighing was done later. The seizure memo does not clearly mention the method of weighing, the instrument used, or the presence of independent witnesses at the time of weighing. The sample drawn was not representative of the entire seized substance, which renders the FSL report unreliable.

18. It is submitted that the entire prosecution case is based on the testimony of police witnesses, whose evidence is interested and requires corroboration. In absence of support from independent witnesses, the testimony of police witnesses should have been scrutinized with greater caution, which the Trial Court has failed to do. Lastly, it is argued that the cumulative effect of the aforesaid contradictions, procedural lapses and non-compliance of statutory provisions creates serious doubt about the prosecution case. Thus, learned counsel for the appellant submits that even if the conviction is maintained, the sentence imposed upon the appellant is harsh and disproportionate.

19. It is submitted that the appellant has already undergone incarceration for a considerable period, has no criminal antecedents, and is the sole breadwinner of his family. Therefore, it is prayed that the sentence imposed upon the appellant be reduced to the period already undergone.

20. Learned State counsel supports the impugned judgment and submits that the Trial Court has rightly recorded conviction on the basis of cogent and reliable evidence. However, he fairly submits that the



Court may consider the prayer of the appellant regarding reduction of sentence in accordance with law.

21. Heard learned counsel for the parties and carefully perused the record.

22. The following questions arise for consideration in this appeal:

(i) Whether the conviction of the appellant under Section 20(B)(ii)(b) of the NDPS Act calls for interference?

(ii) Whether the sentence imposed upon the appellant requires modification?

23. The evidence on record, including the testimony of prosecution witnesses, seizure memo, sampling procedure, FSL report and compliance of statutory provisions, clearly establishes that ganja weighing 5 kilograms was recovered from the conscious possession of the appellant.

24. The learned Trial Court has meticulously examined the evidence and has recorded a well-reasoned finding of guilt. No perversity, illegality or material irregularity has been pointed out by the appellant so as to warrant interference with the finding of conviction. Therefore, this Court finds no reason to interfere with the conviction recorded by the learned Trial Court. Accordingly, the conviction of the appellant under Section 20(B)(ii)(b) of the NDPS Act is affirmed.

25. As regards the sentence, it is evident that the appellant has confined his challenge only to the quantum of punishment. The record reveals that the appellant has already remained in custody for more



than 11 months. It is a settled principle of law that while awarding sentence, the Court must strike a balance between the nature of offence and mitigating circumstances, the age of the appellant, the criminal antecedents and period of incarceration already undergone by the accused.

26. Considering the facts and circumstances of the case, particularly that the appellant has already undergone a part of the sentence and that the quantity involved falls within the intermediate category, this Court is of the considered opinion that the ends of justice would be met if the sentence of imprisonment is reduced to the period already undergone by the appellant, while maintaining the fine imposed by the Trial Court.

27. In view of the foregoing discussion, the appeal is **partly allowed**. The conviction of the appellant under Section 20(B)(ii)(b) of the NDPS Act is upheld. The sentence of rigorous imprisonment imposed upon the appellant is reduced to the period already undergone by him. However, the fine of Rs.10,000/- imposed by the Trial Court is maintained. The appellant is reported to be on bail. His bail bonds stand discharged subject to compliance of the fine amount, if not already deposited.

28. The appellant shall comply with the provisions of Section 437-A of the Code of Criminal Procedure and furnish the requisite bonds before the learned trial Court within the stipulated period.

Sd/-  
(Arvind Kumar Verma)  
Judge