



NAFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRA No. 1200 of 2025**

**1** - Avyakta Mishra S/o Shri Lovkush Mishra Aged About 21 Years R/o Pithampur Distt. Indore M.P India, Chhattisgarh

**2** - Bagish Saket S/o Shri Roshanlal Saket Aged About 19 Years R/o Jorrat P/S Mangava Distt. Rewa M.P. India

**... Appellants****versus**

State Of Chhattisgarh Through P/S Basna Distt Mahasamund C.G.

**... Respondent**

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For Appellants : Mr. Ajay Kumar Mishra, Advocate

For Respondent : Mr. Afroz Khan, P.L.

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**Hon'ble Shri Justice Sanjay Kumar Jaiswal****Judgment on Board****16/04/2026**

1. The present appeal under Section 415(2) of BNSS, 2023 has been filed challenging the judgment of conviction and order of sentence dated 12.06.2025 passed by learned Special Judge (NDPS), Saraipali, District Mahasamund (C.G.), in Special Criminal Case No.45/2023 whereby both the appellants have been convicted and sentenced as under :



<b>Conviction</b>	<b>Sentence</b>
U/s 20(b)(ii)(B) of the NDPS Act	Rigorous imprisonment for 8 years with fine of Rs.50,000/-, in default of payment of fine amount, additional RI for 6 months.

- 2.** The case of prosecution, in short, is that on 07.09.2023, while patrolling near the Palsapali barrier, ASI Jayant Barik of Police Station Basna along with his staff, intercepted an auto-rickshaw (Registration No. OD-17-T-0867). The vehicle was occupied by three individuals: the two present appellants and a co-accused, Hiranya Dhruva, who is currently absconding. Upon being questioned, they gave evasive replies and their conduct appeared suspicious coupled with Ganja-like smell was coming from inside the auto. When questioned specifically about the smell, they stated that ganja was kept in a bag in the empty space behind the middle seat. A proceeding as is required under the NDPS Act was initiated by PW-10 ASI Jayant Barik. Upon conducting a search of the Auto, a total of 13 kg. Ganja was recovered from the joint possession of the occupants and the contraband was hidden behind the middle seat. The statutory provisions under the NDPS Act was complied with and the matter was put to trial before the Special Judge, NDPS, Saraipali, District Mahasamund.
- 3.** So as to hold the appellants guilty, the prosecution has examined as many as 10 witnesses and exhibited 66 documents. The statements of the appellants were also recorded under Section 313 of the Cr.P.C. in which they denied the circumstances appearing against them and pleaded innocence and false implication in the case.
- 4.** The trial Court, after appreciation of oral and documentary



evidence on record, vide impugned judgment dated 12.06.2025 found the appellants guilty for the offence punishable under Section 20(b)(ii)(B) of NDPS Act and accordingly, convicted and sentenced them under the said section as mentioned in paragraph-1 of this judgment leading to the filing of this appeal.

5. Learned counsel for the appellants submits that he is not pressing this appeal so far as it relates to the conviction part of the judgment and would confine his argument to the sentence part thereof only. According to him, the appellants were in custody for about 4 months 27 days during trail and are now in jail from the date of judgment 12.06.2025 i.e. they have already served the jail sentence of about 1 year & 3 months. The appellants have no previous criminal record and the fine amount has already been deposited. Hence, considering all theses facts, the sentence imposed upon the appellants may be reduced to the period already undergone by them.
6. Per contra, learned counsel appearing for the State, supporting the impugned judgment, opposed the arguments advanced on behalf of the counsel for appellants and prayed for dismissal of the appeal.
7. Heard learned counsel for the parties and perused the record.
8. Having gone through the material available on record and the statements of ASI Jayant Barik (PW-10), Constables Naresh Bariha (PW-5), Bhupati Patel (PW-7) & Komal Ram Sahu (PW-9), Head Constable Chaitram Dhruv (PW-8), FSL report Ex.P-63 and the proceedings conducted by the Investigating Officer ASI Jayant Barik (PW-10), the involvement of the appellants in the crime in question is



clearly established. This Court does not find any illegality in the findings recorded by the Trial Court regarding conviction of the appellants for the offence punishable under Section 20(b)(ii)(B) of the NDPS Act.

9. As regards sentence, in the matter of **Mohammad Giasuddin v. 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 Centre, Athens, Greece, maintains that 'Crime is the result of the lack of the right kind of education.' 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 re-culturation. Therefore, the focus of interest in penology is the individual, and 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 Jeffrey 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.”

10. In the light of the decision of the Supreme Court in the case of **Mohammad Giasuddin** (supra) and keeping in view the facts that the appellants were in custody for about 4 months & 27 days during trial and are now in jail from the date of judgment 12.06.2025 i.e. they have already served the jail sentence of about 1 year & 3 months, as per the arrest memo Exs. P-30 & 31, the appellants have studied up to 12<sup>th</sup> class and they are students, no criminal antecedent of the appellants is recorded and also considering the facts and circumstances of the case, this Court is of the opinion that the ends of justice would serve if the appellants are sentenced to the period already undergone by them.
11. Accordingly, the conviction of the appellants under Section 20(b)(ii)(B) of the NDPS Act is maintained but their jail sentence is reduced to the period already undergone by them i.e. 1 year & 3 months. However, the fine and its default stipulation imposed upon appellants by the Trial Court shall remain intact.
12. Consequently, the appeal is **allowed in part** to the extent indicated herein-above.
13. The appellants are reported to be in jail. They be released forthwith if not required to be detained in default of fine and not required in any other case.
14. Record of the trial Court along with a copy of this judgment



be sent back forthwith for compliance and necessary action, if any. A copy of the judgment may also be sent to the concerned Jail Superintendent wherein the appellants are suffering the jail sentence.

**Sd/-  
(Sanjay Kumar Jaiswal)  
JUDGE**

**Khatai**