



2026:CGHC:4242



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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1546 of 2018

1 - Narendra Shikari S/o Aajulal Shikari Aged About 30 Years R/o Village- Matiyari, Police Station- Sipat, Civil And Revenue District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

... Appellant(s)

versus

1 - State Of Chhattisgarh Through Station House Officer, Police Station- Sipat, District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

... Respondent(s)

For Appellant(s)	:	Ms. Seema Singh Chandel, Advocate
For Respondent/State	:	Shri Krishna Gopal Yadav,Dy.GA

(Hon'ble Shri Justice Arvind Kumar Verma)

Judgment on Board

23/01/2026

This criminal appeal under Section 374(2) of the Code of Criminal Procedure, 1973 has been preferred against the judgment of conviction and order of sentence dated 23.08.2018 passed by the learned Special Judge (NDPS Act), Bilaspur, in Special NDPS Case No. 05/2017,



whereby the appellant has been convicted for the offence punishable under Section 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as “the NDPS Act”) and sentenced to undergo rigorous imprisonment for one year with fine of Rs.15,000/-, and in default of payment of fine, to undergo further rigorous imprisonment for three months.

2. The prosecution case, in brief, is that on 09.02.2017, Assistant Sub Inspector Ramesh Kumar Behra received secret information through a mukhbir that the appellant Narendra Shikari, resident of village Matiyari, was illegally carrying ganja on a motorcycle while proceeding from Matiyari towards Pandhi. The said information was duly recorded in the rojnamcha and reduced into writing. The information was communicated to superior officers in compliance with the provisions of Section 42 of the NDPS Act. Thereafter, witnesses Vinod Yadav and Arun Kashyap were called, and a police team comprising Head Constable No. 483 and Constables Nos. 842, 1194 and 601 was constituted.

3. As there was apprehension that delay in action might result in destruction of evidence and a gazetted officer was not immediately available, the police party proceeded to the spot near Beltara Chowk of village Matiyari. At the spot, the appellant was found riding a motorcycle bearing registration No. C.G. 10/EA/4523. After informing him about the purpose of search and following due procedure, search was conducted. During search, one bag was found hanging on the motorcycle. On



opening the bag, a greenish-brown leafy substance having characteristic smell was recovered. On preliminary testing, the substance was identified as ganja. The recovered contraband was weighed on an electronic scale and found to be 2 kilograms. Two samples of 50 grams each were drawn and sealed separately. The remaining contraband weighing approximately 1.900 kilograms was sealed and marked as Exhibit "A", and the samples were marked as A-1 and A-2.

4. The motorcycle was seized and the appellant was arrested. The samples were sent to the forensic laboratory for chemical examination. The forensic report confirmed that the seized substance was ganja. After completion of investigation, charge-sheet was filed before the learned Special Court. Charges under Section 20(b)(ii)(B) of the NDPS Act were framed on 08.03.2017. During trial, the prosecution examined fifteen witnesses and exhibited documentary evidence. Upon appreciation of evidence, the learned trial Court convicted and sentenced the appellant as stated above.

5. Learned counsel for the appellant submits that the impugned judgment of conviction and sentence is unsustainable in law and facts. It is contended that the learned trial Court has failed to properly appreciate the evidence on record and has convicted the appellant on the basis of unreliable, contradictory and legally deficient evidence, in violation of the mandatory provisions of the NDPS Act.



6. It has been argued that the entire prosecution case is founded on alleged secret information said to have been received by P.W.14 Assistant Sub Inspector Ramesh Kumar Behra. However, the prosecution has failed to prove strict compliance of Section 42 of the NDPS Act. P.W.14 in his deposition has stated that he received information on 09.02.2017 and recorded the same in the rojnamcha. However, the prosecution has not proved the exact time of receipt of information, nor has it satisfactorily proved the dispatch of the written information to superior officers prior to the search. Ex. P-1 (information memo) and Exhibit P-32 (rojnamcha entry) do not conclusively establish that the mandatory requirement of prior information being reduced into writing and communicated to superior officers was strictly complied with.

7. Learned counsel for the appellant submits that P.W.14 is the main prosecution witness. However, his testimony suffers from material inconsistencies. He has stated that independent witnesses Vinod Yadav and Arun Kashyap were present at the time of seizure. However, their testimonies do not fully corroborate the version of P.W.14. He has further stated that the contraband was recovered from a bag hanging on the motorcycle. However, he could not explain satisfactorily whether the bag was in conscious possession of the appellant. P.W.2 Arun Kumar Kashyap and P.W.6 Vinod Yadav are cited as seizure witnesses. However, their statements reveal contradictions regarding:

- the exact place of seizure,
- the manner of search,
- the sealing procedure, and



the presence of the appellant at the time of seizure.

8. P.W.6 Vinod Yadav has admitted in his cross-examination that he did not clearly see the weighing and sealing process. This casts serious doubt on the prosecution case. The prosecution has examined several police witnesses including P.W.3, P.W.4, P.W.5, P.W.7 and P.W.10. However, their testimonies are stereotyped and appear to be mechanically reproduced. Learned counsel for the appellant submits that all material witnesses are police personnels and no independent witness has supported the prosecution case, which creates serious doubt about the genuineness of the alleged recovery.

9. It is submitted that the seizure memo (Ex. P-5) does not inspire confidence. The prosecution claims that two samples of 50 grams each were drawn from the seized contraband. However, the prosecution has failed to prove that the samples were drawn in accordance with law, the sealing procedure has not been proved beyond reasonable doubt, and the chain of custody has not been properly established. The forwarding letter (Ex.P-21) and forensic report (Ex. P-22) do not conclusively establish that the samples sent to the laboratory were the same as those allegedly seized from the appellant. Learned counsel for the appellant contends that the appellant was not properly informed of his legal right to be searched before a Gazetted Officer or a Magistrate.

10. Though the prosecution claims that the search was of a bag, it is argued that the search was inextricably linked with the person of the appellant, and therefore, compliance of Section 50 was mandatory. No



document has been produced to show that the appellant was informed of his legal right in a meaningful manner. It is argued that the prosecution has failed to prove conscious possession of the contraband. The motorcycle bearing registration No. C.G. 10/EA/4523 was not proved to be owned by the appellant. No document from the Regional Transport Authority was produced to establish ownership or possession of the vehicle. The prosecution has also failed to prove that the bag allegedly containing ganja belonged to the appellant. In absence of proof of conscious possession, the conviction of the appellant cannot be sustained.

11. Learned counsel submits that the prosecution has failed to establish its case beyond reasonable doubt. The trial Court has failed to appreciate that the NDPS Act prescribes stringent punishment and, therefore, strict compliance of statutory provisions is mandatory. The learned trial Court has ignored material contradictions and omissions in the evidence and has mechanically relied upon the testimony of police witnesses.

12. Learned counsel for the appellant submits that even if the conviction is upheld, the sentence imposed upon the appellant is harsh and disproportionate. It is submitted that the quantity of ganja allegedly recovered is intermediate (2 kg), the appellant is a first-time offender, there is no evidence of previous criminal antecedents, and the appellant has already undergone substantial period of incarceration. Therefore, it is submitted that the sentence of imprisonment may be reduced to the



period already undergone by the appellant. The prosecution has examined several police witnesses including P.W.3, P.W.4, P.W.5, P.W.7 and P.W.10. However, their testimonies are stereotyped and appear to be mechanically reproduced.

13. He further submits that all material witnesses are police personnel and no independent witness has supported the prosecution case, which creates serious doubt about the genuineness of the alleged recovery. It is submitted that the seizure memo (Ex.P-5) does not inspire confidence. The prosecution claims that two samples of 50 grams each were drawn from the seized contraband. However, the prosecution has failed to prove that the samples were drawn in accordance with law, the sealing procedure has not been proved beyond reasonable doubt, and the chain of custody has not been properly established.

14. The forwarding letter (Ex. P-21) and forensic report (Exhibit P-22) do not conclusively establish that the samples sent to the laboratory were the same as those allegedly seized from the appellant. Learned counsel for the appellant contends that the appellant was not properly informed of his legal right to be searched before a Gazetted Officer or a Magistrate. Though the prosecution claims that the search was of a bag, it is argued that the search was inextricably linked with the person of the appellant, and therefore, compliance of Section 50 was mandatory. It is argued that the prosecution has failed to prove conscious possession of the contraband. The motorcycle bearing registration No. C.G. 10/EA/4523 was not proved to be owned by the appellant. No document



from the Regional Transport Authority was produced to establish ownership or possession of the vehicle.

15. The prosecution has also failed to prove that the bag allegedly containing ganja belonged to the appellant. In absence of proof of conscious possession, the conviction of the appellant cannot be sustained. He submits that the prosecution has failed to establish its case beyond reasonable doubt.

16. The trial Court has failed to appreciate that the NDPS Act which prescribes stringent punishment and, therefore, strict compliance of statutory provisions is mandatory however, it has ignored material contradictions and omissions in the evidence and has mechanically relied upon the testimony of police witnesses and even if the conviction is upheld, the sentence imposed upon the appellant is harsh and disproportionate looking to the quantity of ganja allegedly recovered, which is less than commercial quantity (2 kg), the appellant is a first-time offender, there is no evidence of previous criminal antecedents, and the appellant has already undergone substantial period of incarceration. Therefore, the sentence of imprisonment may be reduced to the period already undergone by the appellant.

17. Learned counsel for the State opposed the appeal and supported the impugned judgment. It was submitted that the prosecution has proved the case beyond reasonable doubt through cogent and reliable evidence. The recovery of 2 kilograms of ganja from the possession of the appellant has been duly proved by the testimonies of prosecution



witnesses, particularly P.W.2, P.W.3, P.W.6 and P.W.14, which are consistent and trustworthy. It was further argued that the mandatory provisions of the NDPS Act have been substantially complied with. The secret information was duly recorded and communicated to superior officers, the seizure and sampling procedure was properly conducted, and the chain of custody of the seized contraband has been established. The forensic report conclusively confirms that the seized substance was ganja. He submits that minor discrepancies in the statements of witnesses do not affect the core of the prosecution case and the evidence of police personnel cannot be discarded merely on the ground that they are official witnesses. It was contended that the trial Court has correctly appreciated the evidence on record and has rightly convicted the appellant under Section 20(b)(ii)(B) of the NDPS Act. Therefore, the appeal deserves to be dismissed and the judgment of conviction and order of sentence passed by the learned trial Court be affirmed.

18. Heard counsel for the parties, their rival submissions and the material available on record.

19. This Court has carefully examined the oral and documentary evidence on record, the submissions advanced by learned counsel for the parties, and the impugned judgment passed by the learned trial Court. From the testimonies of prosecution witnesses, particularly P.W.2 Arun Kumar Kashyap, P.W.3, P.W.6 Vinod Yadav and P.W.14 ASI Ramesh Kumar Behra, it is clearly established that the appellant was



intercepted on 09.02.2017 while riding a motorcycle and a bag containing ganja was recovered from his possession. The seizure memo, arrest memo, sampling documents and other exhibits have been duly proved. The forensic science laboratory report conclusively establishes that the seized substance was ganja.

20. The defence has not been able to elicit any material contradiction or infirmity in the prosecution evidence so as to discredit the core of the prosecution case. Minor discrepancies pointed out by the appellant do not go to the root of the matter and are insufficient to discard the prosecution version.

21. With regard to compliance of Section 42 of the NDPS Act, it is evident that the secret information was reduced into writing and communicated to superior officers prior to the search and seizure. Therefore, the requirement of Section 42 stands substantially complied with.

22. As regards Section 50 of the NDPS Act, the search in the present case was conducted of a bag carried by the appellant and not of his person. It is well settled that Section 50 applies only to personal search and not to search of bag or vehicle. Hence, the contention regarding non-compliance of Section 50 is devoid of merit.

23. The procedure of seizure, sampling, sealing and forwarding of samples to the forensic laboratory has been duly proved by the prosecution. The chain of custody has been established. The



requirements of Sections 52-A and 57 of the NDPS Act have also been complied with.

24. The contraband was recovered from a bag carried by the appellant on his motorcycle. The appellant failed to offer any plausible explanation regarding possession of the bag and its contents. Therefore, this Court is satisfied that the appellant was in conscious possession of the contraband.

25. The quantity of ganja recovered from the appellant was 2 kilograms, which falls within the category of quantity more than small quantity but less than commercial quantity. Accordingly, the offence is punishable under Section 20(b)(ii)(B) of the NDPS Act.

26. On overall appreciation of evidence, this Court finds that the prosecution has successfully proved beyond reasonable doubt that the appellant committed the offence punishable under Section 20(b)(ii)(B) of the NDPS Act. The findings recorded by the learned trial Court are based on proper appreciation of evidence and do not suffer from any perversity, illegality or material irregularity. Therefore, the conviction of the appellant deserves to be affirmed.

27. As regards the sentence, considering the nature of the offence, the quantity of contraband recovered, the age of the appellant, absence of previous criminal antecedents and the fact that the appellant has already undergone a substantial period of incarceration, this Court is of the considered opinion that the ends of justice would be met if the



sentence of imprisonment imposed upon the appellant is reduced to the period already undergone by him, while maintaining the fine imposed by the trial Court.

28. Consequently, the criminal appeal is partly allowed. The conviction of the appellant under Section 20(b)(ii)(B) of the NDPS Act is hereby affirmed. However, the sentence of imprisonment is modified and reduced to the period already undergone by the appellant. The fine imposed by the trial Court is maintained.

29. Since the appellant is reported to be on bail, his bail bonds and surety bonds shall stand discharged, subject to deposit/payment of the fine amount, if not already deposited.

30. 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