



NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1810 of 2024

1. Dinesh Dahariya S/o Late Raju Dahriya Aged About 21 Years Resident Of Bhilai Housing Board Coloney, H.No. 96 P.S. Jamul District - Durg (C.G.)
2. Shiv Kumar Tandan S/o Gajraj Tandan Aged About 23 Years Resident Of Bhilai Housing Board Coloney H.No. 99, P.S. Jamul, District - Durg (C.G.)

... Appellants

versus

State Of Chhattisgarh Through Station House Officer,
Police Station - Arang District - Raipur (C.G.)

... Respondent

For Appellants : Mr. Vikash Pradhan, Advocate

For Respondent : Mr. Sumit Singh, Dy. Advocate General

Hon'ble Shri Justice Sanjay Kumar Jaiswal

Judgment on Board

19/01/2026

1. The present appeal under Section 415(2) of BNSS, 2023 has been filed challenging the judgment of conviction and order of sentence dated 17.09.2024 passed by learned Special Judge (NDPS Act), Raipur, District Raipur (C.G.), in Special Criminal Case (NDPS) No.236/2023 whereby both the

appellants have been convicted and sentenced as under :

Conviction	Sentence
U/s 20(b)(ii)(B) of the NDPS Act	Rigorous imprisonment for 10 years with fine of Rs.1,00,000/-, in default of payment of fine amount, additional RI for 2 years.

2. The case of prosecution, in short, is that on 17.10.2023, a secret information was received by Sub Inspector M. L. Dewangan (PW-6) of Police Station Arang to the extent that two persons were transporting Ganja in a car from Mahasamund to Raipur via Arang. The vehicle contained the driver and one passenger, who were allegedly carrying the contraband in one white and one green sack for the purpose of sale. On the basis of the said information, a proceeding as is required under the NDPS Act was initiated by PW-6 M. L. Dewangan (PW-6). Intimation in this regard was immediately sent to the higher officer. The police team, headed by PW-6 and accompanied by independent witnesses, went to the spot and intercepted the said vehicle. Upon conducting a search of the car, the team found a total of 21 kg Ganja from the joint possession of the occupants: 10 kg of Ganja was found in a green sack belonging to Appellant No. 1, Dinesh Dahriya and 11 kg of Ganja was found in another sack belonging to Appellant No.2, Shiv Kumar Tandan. The statutory provisions under the NDPS Act was complied with and the matter was put to trial before the Special Judge, NDPS Act, Raipur.
3. So as to hold the appellants guilty, the prosecution has examined as many as 11 witnesses and exhibited 48 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 17.09.2024 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 65 days during trial and are now in jail from the date of judgment 17.09.2024 i.e. they have already served the jail sentence of about 1 year, 6 months & 7 days. They are poor persons and have no previous criminal record. Hence, considering all these 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 Sub Inspector M. L. Dewangan (PW-06), Constables Girdhar Prajapati (PW-1) & Jagdish Prasad Kosaria (PW-4), Head Constables Hemlal Diwan (PW-3), Mukesh Tandon (PW-5) & Harnarayan Sahu (PW-11),

independent witness Ram Kumar Pardhi (PW-7), FSL report Ex.P-46 and the proceedings conducted by the Investigating Officer M. L. Dewangan (PW-6), 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 as regards 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 Geoffrey 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 fact that the appellants were in custody for about 65 days during trial and are now in jail from the date of judgment 17.09.2024 i.e. they have already served the jail sentence of about 1 year, 6 months & 7 days, as per the arrest memo Exs. P-32 & 33, appellant No.1 has studied up to 12th class and was engaged in transporting work and appellant No.2 has studied up to 9th Class and is a driver by profession, 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, 6 months & 7 days. 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

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