

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1661 of 2018

- Sanjay Singh Yadav, aged about 32 years, S/o Shri Baban Singh Yadav, R/o Itani, Police Station Itani ,District Baxar, Bihar. ---- **Appellant.**

Versus

- The State Of Chhattisgarh, through the Police Station Udaipur, District Surguja Chhattisgarh. ---- **Respondent.**

12.01.2021	Dr. Shailesh Ahuja, Counsel for the appellant. Mr. Pawan Kesharwani, PL for the respondent/State. Heard on IA. No 2 of 2018 application for suspension of sentence and grant of bail. 2. The appellant has been convicted under the impugned judgment of conviction and order of sentence dated 30.07.2018 passed by learned Special Judge, NDPS, Ambikapur (CG), in Special Criminal (NDPS) Case No.08/2017 for the offence under Section 20 (ii) (c) of the NDPS Act imposing the sentence of RI for 15 years with fine of Rs.1,50,000/-, plus default stipulation. 3. Learned counsel for the appellant would submit that conviction of the appellant is unsustainable in law because entire prosecution case is highly doubtful as neither the independent witnesses of seizure of <i>Ganja</i> have supported the case of the prosecution, nor the witness who is alleged to have brought weighing machine and allegedly weighed <i>Ganja</i> has supported the case of the prosecution and says that entire proceedings were drawn in the police station. It is also submitted that the records of the <i>Malkhana</i> register do not contains anything with regard to deposit of sample seal. It is further submitted that even the
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proceedings under Section 42 have not been drawn and the oral information said to have been received from higher authority is not reflected from *Roznamcha Sanha* (Ex. P-21) and the Investigating Officer (PW-7) has admitted that before leaving the police station or before effecting seizure or arrest no information was sent to the higher authorities. Therefore, it is argued, the independent witnesses have turned hostile, various defects renders the evidence of I/O (PW-7) doubtful and conviction could not be sustained only on his evidence.

4. On the other hand, State counsel would submit that even though the independent witnesses have not supported the case of the prosecution, the prosecution case has been held proved on the basis of reliable testimony of I/O (PW-7). The defects/discrepancies which have been pointed out are not very material and do not render the case of the prosecution doubtful.

5. Taking into consideration the submission of learned counsel for the parties particularly taking into consideration that in the present case after the independent witnesses turned hostile, even the witness of weighment have not supported the case of the prosecution and further taking into consideration that on the peculiar circumstances of the case and the evidence on record as also discrepancies pointed out, even the evidence of PW-7 is rendered unsafe to rely upon, and that the appellant have undergone more than 4 years of jail sentence, we are inclined to suspend the jail sentence.

6. Accordingly, the application is **allowed** and his jail sentence is suspended during the pendency of the appeal and he shall be released

on bail on furnishing a personal bond of Rs.50,000/- along with two local sureties of the like amount to the satisfaction of the concerned trial Court, for his appearance before the concerned trial Court on **15th of February, 2021** and on all such further dates as may be directed by the said Court, interval being not less than 6 months, till final disposal of this appeal.

List this appeal for final hearing.

Sd/-

(Manindra Mohan Shrivastava)

Judge

Sd/-

(Vimla Singh Kapoor)

Judge