



2026:CGHC:10399



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AFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRA No. 1629 of 2021**

Smt. Prakash Bai Shrivash W/o Shankar Lal Shrivash, aged about 38 years
R/o Pavni, Police Station Bilaigarh, District Baloda Bazar Bhatapara
(Chhattisgarh), District : Balodabazar-Bhathapara, Chhattisgarh

... Applicant**Versus**

State of Chhattisgarh, through Police Station Bilaigarh, District Baloda Bazar
Bhatapara (Chhattisgarh),

... Respondent**(Cause title is taken from Case Information System Software.)**

For Appellant : Mr. Shubham Tripathi, Advocate.

For State/Respondent : Mr. Rishi Raj Pithwa, Dy. G.A.

Hon'ble Shri Justice Arvind Kumar Verma**(Judgment on Board)****27.02.2026**

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against the impugned judgment of conviction and order of sentence dated 26.11.2021 passed by learned Special Judge (NDPS Act), Baloda Bazar, District- Baloda Bazar-Bhatapara (C.G.) in Special Criminal Case (N.D.P.S.) No. 05/2017, wherein the said Court



convicted the appellant and sentenced her as under:-

Conviction	Sentence
U/S 20 b (ii) (B) of NDPS Act	R.I for 04 years with fine amount of Rs. 25,000/-, in default of payment of fine, to undergo further R.I. for six months.

2. As per case of the prosecution, on 07.04.2017 at about 16:05 hours, Station House Officer (SHO) K.S. Usendi of Police Station Bilaigarh, along with Sub-Inspector R.S. Singh, Constable No. 726 Pandu Bhardwaj, Constable No. 543 Hemant Rajput, and Lady Constable No. 452 Mohan Kumari, proceeded on routine patrol duty towards village Pawani for the purpose of curbing illegal activities relating to illicit liquor, gambling, and narcotic substances. At approximately 16:25 hours, while present in village Pawani, SHO K.S. Usendi received credible secret information from a reliable informant that one Shankar Lal Shrivastava, resident of village Pawani, was illegally possessing and selling narcotic substance (ganja) from his house, and that immediate raid would result in recovery of contraband. Acting upon the said information, SHO K.S. Usendi reduced the information into writing vide Exhibit P/04 and prepared the preliminary information report vide Exhibit P/01. Notice under Section 42 of the NDPS Act was prepared (Exhibit P/03). The information so recorded was forthwith communicated to the Sub-Divisional Officer (Police), Bilaigarh, through Constable No. 726 Pandu Bhardwaj in compliance with the mandatory provisions of law. Thereafter, in the presence of independent witnesses namely Ramcharan Sahu and Munnalal Sahu, the police party proceeded to take lawful action on the basis of the said information. During the course of the raid, the accused Shankar Lal Shrivastava was not found



present at his house. However, his wife, namely accused Smt. Prakash Bai, was found present therein. She was apprised, in the presence of independent witnesses namely Ramcharan Sahu and Munnalal Sahu, about the secret information received by the police regarding possession and sale of illegal narcotic substance. Prior to conducting the search, notice under Section 50 of the NDPS Act (Exhibit P/05) was duly served upon accused Smt. Prakash Bai, informing her of her legal right to be searched before a Gazetted Officer or Magistrate. The accused, after understanding the contents of the notice, gave her written consent for her house to be searched by the police party itself in the presence of witnesses, which was recorded vide Exhibit P/06. Thereafter, personal search of the accused was conducted by the police party in the presence of independent witnesses, and memorandum/panchnama thereof was prepared vide Exhibits P/07 and P/08. Subsequently, search of the residential premises of the accused was carried out in accordance with law and in the presence of the aforesaid witnesses. During the course of search of the residential premises, in a newly constructed room situated on the upper floor of the house, one packet kept inside a nylon bag and another open packet were recovered. Upon inspection, the said packets were found to contain suspected narcotic substance (ganja). A small weighing scale and a coin were also recovered from the said place, indicating use for weighing the contraband substance. The search and seizure proceedings were conducted in the presence of independent witnesses, and a detailed search-cum-seizure panchnama was prepared on the spot, which is marked as Exhibit P/09. Thereafter, a detailed recovery panchnama was prepared on the spot, which is marked as Exhibit P/10.



During the search, from a packet kept inside a nylon bag, 01 kilogram and 300 grams of suspected narcotic substance (ganja), along with one small weighing scale and a coin, were seized. For the purpose of prima facie identification, the recovered substance was tested by rubbing, burning, and smelling it in the presence of independent witnesses. Upon such examination, the substance was identified as ganja. An identification panchnama in this regard was prepared on the spot in the presence of witnesses and is marked as Exhibit P/11. Thereafter, Police Station In-charge K.S. Usendi deputed Constable No. 543, Hemant Rajput, to summon an authorized weigher for proper weightment of the seized contraband. A duty certificate (Exhibit P/24) was issued to him for the said purpose. Accordingly, notice (Exhibit P/18) was served upon the weigher, Ranjit Devangan, who was brought to the spot. Upon arrival, weigher Ranjit Devangan conducted physical verification of his weighing scale in the presence of independent witnesses and certified its correctness. The verification memo in this regard was prepared and marked as Exhibit P/12. Thereafter, the seized narcotic substance was weighed, and it was found to be 01 kilogram and 300 grams. From the total seized quantity, two representative samples of 50 grams each were drawn separately, sealed, and packed in accordance with law. A weightment and sampling panchnama was prepared on the spot, which is marked as Exhibit P/13 and after completion of other formalities the seized property was sent to Malkhana. The samples of seized cannabis plants were sent to FSL for its chemical examination. After completion of due and necessary investigation, a charge-sheet was filed by the police.



3. To robe the appellant in the crime in question, prosecution has examined as many as 09 witnesses. In the statement of the appellant was recorded under Section 313 Cr.P.C., the appellant pleaded her innocence and false implication in the case. However, no defence witness was adduced by the appellant.
4. Learned Trial Court after hearing the counsel for the respective parties and considering the material available on record, has convicted and sentenced the accused/appellant as mentioned in opening para of this judgment.
5. I have heard learned counsel for the parties at length and perused the record with utmost circumspection.
6. Learned counsel for the appellant vehemently argued that the Investigating Officer has not complied with the mandatory provisions of Section 50 (4) of the NDPS Act, 1985. He further argued that as per the secret information given by the Mukhbir that the husband of the appellant was selling the Ganja and kept the ganja in his house, on that information, the Investigating Officer along with his raiding party, raided the house of the husband of the appellant, but husband of the appellant was not present at that time. Learned counsel further submits that the learned Trial Court failed to correctly examine the statements of the seizure witnesses and ignored material contradictions and omissions in the evidence of the prosecution witnesses. The findings of the Courts below are based on assumptions and not on clear and reliable evidence, which has resulted in the wrongful conviction of the appellant. Further, the prosecution has failed to prove the essential ingredients of the offence under Section 20B(ii)(b) of the Narcotic Drugs and



Psychotropic Substances Act, 1985 beyond reasonable doubt, including conscious possession and compliance with mandatory legal provisions. Therefore, the impugned judgment of conviction and sentence deserves to be set aside and the appellant is entitled to acquittal.

7. The vital question in this case is whether there is a violation of Section 50 (4) of the NDPS Act, 1985 ?
8. Section 50 of the NDPS Act, 1985 deals with the conditions under which the search of the persons shall be conducted. The purpose of this provision is to ensure fairness, transparency, and protection against false implication. Compliance with Section 50 is mandatory in case of personal search, and failure to comply may vitiate the conviction. Section 50 (4) of the NDPS Act, 1985 is a specific procedural safeguard stating that no female shall be searched by anyone except a female.
9. The record reveals that as per Search Panchnama (Ex. P/08) on the instructions of the Investigating Officer, the appellant had touched the male police officer. For ready reference, the significant portion of search panchanama (Ex.P-/8) is reproduced herein as under :-

“संक्षिप्त विवरण इस प्रकार है कि आज दिनांक 07.04.2017 को इस वक्त प्रकाश बाई श्रीवास w/o शंकर श्रीवास द्वारा मौके पर रेड करने उपस्थित उक्त पुलिस अधि./कर्म. के बदन एवं वाहन की तलाशी समक्ष गवाह ली गई किसी प्रकार का आपत्तिजनक वस्तुएं नहीं मिली।”

10. A bare reading of the aforesaid manifestly points towards that the appellant was forced to touch the body of the male police officers for



their search. Section 50 (4) of NDPS Act, 1985 provides that no female shall be searched by anyone excepting a female, so how can a female be forced to touch the body of the male person. Under the above provisions a male police officer cannot personally search a woman, nor can he direct to reach her body to his person for a search, also he cannot direct the woman to take “Jama Talashi” of male police officers. Either search or Jama talashi it must be conducted with strict regard to decency.

11. In the present case, a female accused was forced to search a male police officer instead, that act does not satisfy the mandatory requirement of Section 50(4). The law does not require the accused to search the police officer; rather, it mandates that if the accused is a woman, her search must be conducted only by a female officer, and failure to comply this would amount to non-compliance of mandatory provision and such violation seriously affect the prosecution case. Therefore, a contraband seized as a result of search and seizure made in contravention of Section 50 (4) of NDPS Act, 1985, cannot be used to fasten the liability of unlawful possession of the contraband on the female person from whom the contraband was allegedly being seized in an illegal manner.
12. It is also pertinent to mention here that in the case in hand, the secret information was received by the Investigating Officer that the husband of the appellant had kept the contraband article ganja in his house for selling, but at the time of conduction of raid, the husband of the appellant was not present in the house and upon being searched the house the appellant by the Investigating Officer, 1.300 kilogram ganja



was recovered from newly constructed room. No statement of the accused was recorded by the Investigating Officer under Section 27 of the Indian Evidence Act, 1872, and no discovery of any fact has been made in consequence thereof. Further, the house in question was not in the exclusive possession of the appellant, as the husband of the appellant and other family members were also residing therein. Therefore, it cannot be said that the ganja was kept in the exclusive possession of the appellant within her house premises.

13. I have also found that the mandatory requirements of Central Government Notification No. 01/89 have not been complied with by the prosecution. Further, the provisions of Section 52A of the Narcotic Drugs and Psychotropic Substances Act, 1985, which lay down the procedure for proper seizure, sampling, inventory, and certification of seized contraband before the Magistrate, have also not been followed in its true spirit. These safeguards are intended to ensure the authenticity and integrity of the seized material and to rule out any possibility of tampering. Non-compliance with such mandatory provisions creates serious doubt regarding the prosecution case and affects the credibility of the alleged recovery. In view of these material procedural lapses, this Court is of the considered opinion that the learned Trial Court erred in law in convicting the appellant under Section 20(b)(ii)(B) of the NDPS Act, 1985, and the conviction cannot be sustained.
14. *Ex consequenti*, the criminal appeal is allowed. The impugned judgment of the learned trial Court is hereby set aside. The appellant is acquitted of the charge under Section 20 b (ii) B of NDPS Act, 1985 by extending him benefit of doubt.



15. The appellant is reported to be on bail. However, keeping in view the provisions of Section 481 of BNSS, 2023 the appellant is also directed to furnish a personal bond for a sum of Rs. 25,000/- with one surety in the like amount before the Court concerned which shall be effective for a period of six months alongwith an undertaking that in the event of filing of special leave petition against the instant judgment or for grant of leave, the aforesaid appellant on receipt of notice thereon shall appear before the Hon'ble Supreme Court.
16. The trial Court record along with a copy of this judgment be sent back immediately to the trial Court concerned for compliance and necessary action.

Sd/-

(Arvind Kumar Verma)

JUDGE