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HIGH COURT OF CHHATTISGARH AT BILASPUR**CRA No. 1998 of 2022**

Mohammed Ikram Khan S/o Late Mohammed Alim Khan Aged About 52 Years R/o Kashiram Colony, Haziganj, Police Station - Kannauj District Kannauj, Uttar Pradesh

... Appellant**versus**

State Of Chhattisgarh Through The Station House Officer, Police Station - Keshkal, District : Kondagaon, Chhattisgarh

... Respondent

For Appellant : Mr. Sharad Mishra, Advocate.

For Respondent : Ms. Ankita Shukla, Panel Lawyer.

Hon'ble Shri Ramesh Sinha, Chief Justice
Judgment on Board

04/03/2025

1. Though, today the present appeal has been listed for hearing on I.A. No.1 of 2022, which is an application for suspension of sentence and grant of bail, but with the consent of learned counsel for the parties and considering the period of detention of the appellant, the appeal is heard finally.
2. Accordingly, I.A. No. 01 of 2022 stands disposed of.
3. This appeal is directed against the judgment of conviction and



order of sentence dated 21.10.2022 passed by the Special Judge, NDPS Act, Kondagaon, District – Kondagaon (C.G.) in Special Case No.05/2018 whereby the learned Special Judge after holding the appellant guilty for the offence punishable under Section 20 (b) (ii) (C) of the Narcotic Drug and Psychotropic Substance Act, 1985 (hereinafter refereed to as 'the Act') and sentenced him to undergo R.I. for 10 years and to pay fine of Rs.1,00,000/-, in default of payment of fine to further undergo R.I. for 1 year.

4. The judgment of conviction and order of sentence is challenged on the ground that without there being any evidence relating to conscious possession of contraband article (Ganja) and ignoring the fact that the prosecution has not complied with the mandatory provisions of the Act which is meant for providing the safeguard to the accused, learned trial Court has committed an illegality in convicting and sentencing the appellant as aforementioned.
5. Case of the prosecution, in brief, is that in 2017, Investigating Officer Inspector, Sharad Dubey (PW-12) was posted as Inspector/Station House Officer at Keskhal Police Station. On October 12, 2017, at 4:00 P.M., he received information through a secret informant that a white pickup truck (UP-77 AN-3372) was transporting illegal ganja from Jagdalpur to Raipur, heading towards Keskhal. The Investigating Officer recorded this information in the daily diary and informed senior officials. He then sent Constable Chunnihal Markam (867) (PW-13) to the office of



the Sub-Divisional Officer of Police (SDOP), Keskhal, with a written application for further action. Upon receiving instructions from the SDOP, Keskhal, the Investigating Officer sent Constable Lalchand Thakur to summon witnesses from Keskhal town. The constable returned with witnesses Santosh Nag and Anil Kuldeep. The Investigating Officer obtained their consent to testify and prepared a panchnama of the secret information.

6. Subsequently, the Investigating Officer, along with staff members, including Sub-Inspector Majumdar, Head Constable 328, Constables 432, 428, 683, and 600, and soldiers 78 and 79, and two independent witnesses, set out in a government vehicle (CG 03 4762) equipped with an investigation kit, they reached in front of police station and conducted an M.C.P. (Measurement Checking Point) procedure. During the said procedure, the suspicious vehicle (UP-77 AN-3372) was spotted approaching from Jagdalpur and two individuals were found inside the same. When questioned, the driver introduced himself as Neeraj Kanaujia, and the passenger introduced himself as Mohammad Ikram Khan. The Investigating Officer informed them about the secret information and obtained their consent to search the vehicle. Both suspects admitted to transporting illegal ganja for profit. The Investigating Officer then sent Constable Than Singh Chandravanshi to summon a weighman. After obtaining the suspects' consent, their search was conducted in accordance with the provisions of the NDPS Act. Before searching the suspects,



the Investigating Officer, Police Staff, government vehicle, and independent witnesses were searched, but no suspicious substances were found.

7. Thereafter, the Investigating Officer along with his staff and with the help of witnesses searched the suspicious vehicle pickup in which packets packed with brown plastic tape were recovered, hidden in a special chamber under the trolley at the rear of the vehicle. When the suspects/accused took them out and counted, there were a total of 157 packets. Vehicle related documents were recovered from the dashboard of the suspicious vehicle. The suspicious packets recovered above were numbered from 1 to 157 with a marker pen. During the search of the accused, a mobile of Lava company, driving license, PAN card, two ATM cards, Rs 950 cash was recovered from accused Neeraj Kumar Kanojia and a mobile of ITEL company from accused Mohammad Ikram and the notice given before the proceedings was recovered from both the accused. Constable Thansingh Chandravanshi appeared on the spot with the weigher Devendra Nag along with the electronic weighing machine. The investigator gave notice to the weigher and obtained his consent for the weighing proceedings. Thereafter, after verifying the electronic weighing machine, the packets of the recovered drug were weighed by the weigher in which the total weight of all the said packets was found to be 220.990 kg. The recovered packets were identified by witnesses in which the witnesses said that the said packets had a



strong smell like that of ganja. The Investigating Officer gave separate notices to the accused to produce valid documents regarding transportation of the recovered drugs, on which the accused stated in writing that they did not have any documents and said that the suspicious vehicle belonged to Raj Kishore Yadav, resident of Hardevganj, Kannauj and that it was on his instructions that the illegal ganja was bought from Malkangiri, Odisha and taken to Kannauj, Uttar Pradesh for sale. The packets of recovered ganja were filled in five white plastic bags and sealed and the said narcotic substance and other items were seized and the accused were arrested on the spot. The Investigating Officer prepared separate panchnamas of the said proceedings at the scene of the crime as well as registered a rural complaint of crime number 0/2017 against the accused on the spot. After this, the accused and the items recovered from them, along with the staff and witnesses, returned to the police station and presented the Dehati Nalsi report, on the basis of which Inspector Rajesh Jagat registered a First Information Report against the accused in Keshkal police station under crime number 120/2017, Section 20 B C of NDPS Act. The Investigating Officer handed over the seized items recovered from the accused to the store clerk and received the delivery receipt.

8. During the investigation, statements of witnesses were recorded, spot map (Ex.P16) of the place of occurrence was prepared and Patwari map was obtained, inventory, summarizing and sampling



of the seized narcotic substance ganja was conducted by the Executive Magistrate, Keshkal, photography of the said action was also done, the sample packet prepared during the inventory was sent to the State Forensic Science Laboratory, Raipur for testing through a letter from the Superintendent of Police, Kondagaon, and the test report was obtained, in which it was found that the sample packet sent contained ganja. The opinion was given. In relation to the suspicious vehicle, a memorandum was issued to the RTO Kanpur and information about the registered owner of the suspicious vehicle was obtained and the statement of the vehicle owner Anil Kumar Mishra was taken in which he told that the said suspicious vehicle was purchased by Ramkishore Yadav through finance. In the absconding of the vehicle owner Ramkishore, a separate information was given to present a supplementary challan against him under Section 173 (8) CrPC along with other necessary investigations and after that a charge-sheet was presented against the accused in the court on 27.01.2018.

9. In order to prove the guilt of the appellant/accused, the prosecution has examined as many as 13 witnesses. Statement of the accused/appellant was recorded under Section 313 of the Code of Criminal Procedure, 1973, in which he declined to provide any evidence in his support.
10. Learned Special Judge after affording an opportunity of hearing to the parties, convicted and sentenced the accused/appellant as



aforementioned against which, the instant appeal has been filed under Section 374(2) of the Code of Criminal Procedure, 1973.

11. Learned counsel for the appellant submits that the prosecution utterly failed to prove conscious possession of contraband article and in the absence of conscious possession, the accused is entitled for acquittal. He further submits that learned trial Court erred in not recognizing that, prior to the search of the accused, they were not afforded the option to be searched in the presence of a Gazetted Officer or a Magistrate, as mandated by Section 50 of the NDPS Act. The Hon'ble Supreme Court has consistently held, in a series of judgments, that the accused must be given the option to choose whether they wish to be searched in the presence of a Gazetted Officer or a Magistrate. Section 50 confers a significant right upon the person to be searched, allowing them to request the presence of a Gazetted Officer or a Magistrate during the search. The failure to provide this option to the accused renders the entire conviction invalid. He also submits that samras has not been properly done and all the individual witnesses have been turned hostile, further the appellant has already served out 7 years and 4 months of jail sentence as awarded by learned trial Court, therefore, the sentence already undergone by him may be suffice to meet the ends of justice.
12. On the other hand, judgment impugned is supported on behalf of the respondent/State and submits that conscious possession of the accused has been established by the prosecution by adducing



evidence. The prosecution has complied with the provisions of Special Act and conviction and sentence is sustainable under the law.

13. I have heard learned counsel for the parties and perused the judgment impugned and record of the trial Court.
14. In order to establish the complicity of the accused/appellant in the crime in question, the prosecution has examined Mr. Sharad Dubey (PW-12), Inspector who has categorically deposed that after receiving information from the informant, he alongwith the investigation team, including staff and independent witnesses, proceeded to the MCP site. A white pickup truck (UP 77) was stopped, and its occupants, Neeraj Kanaujiya and Ikram Khan, confessed to transporting ganja from Odisha to UP for sale. After the accused admitted to having ganja in their vehicle, a constable was sent to bring a weighman. The constable brought Devendra Nag, the weighman, with an electronic weighing machine. Before searching the accused, they were informed about their right to have their search conducted by a Magistrate or a Gazetted Officer, as per Section 50 of the NDPS Act. Both accused agreed in writing to have their search conducted by the Investigating Officer. A search was conducted in the presence of witnesses and with the help of accompanying staff of the two accused and their vehicle UP 77. The search revealed packets wrapped in brown plastic tape hidden beneath the vehicle's trailer. Approximately 150 packets were found, emitting a strong odor of ganja. The



packets were identified by the witnesses and staff, and a Panchnama was prepared to identify the narcotic substance. He then obtained the weighman's consent to weigh the packets seized from the accused. The electronic weighing machine was physically verified, and a Panchnama was prepared. The weighman, Devendra Nag, weighed the packets separately and reported a total weight of approximately 220 kg. He issued separate notices to the accused to produce documents related to ganja transportation, but they stated they had no documents.

15. Mr. Shekhar Patel (PW-10), Naib Tehsildar has stated in his statement that on October 18, 2017, he was posted as Naib Tehsildar at Tehsil Office Keshkal. The Sub-Divisional Magistrate, Keshkal, appointed him as the Executive Magistrate to conduct the seizure and inventory of the seized ganja under Crime No. 120/2017 under Section 20(b) of the NDPS Act. Inspector Sharad Dubey, in-charge of Keshkal Police Station, presented the seized ganja in 5 plastic bags, sealed with a seal and bearing the seal of Police Station Keshkal, with a total weight of 220.990 Kgs, along with the case diary at the Tehsil Office Keshkal.
16. Mr. Mahettar Netam (PW-9), Head Constable has stated in his statement that on October 18, 2017, Inspector Sharad Dubey, in charge of Keshkal Police Station, received seized ganja related to Crime No. 120/2017 under Section 20(b) of the NDPS Act. The ganja was taken out of the malkhana (storehouse) for inventory and sampling procedures. On the same day, Inspector Sharad



Dubey got the ganja sealed in five plastic bags and prepared two 50-gram sample packets (S1 and S2) for chemical testing. He received these packets from Inspector Sharad Dubey and deposited them in the malkhana. On October 23, 2017, he received the two sealed packets (S1 and S2) from the Executive Magistrate for chemical testing. He sent packet S1 to the State Forensic Science Laboratory in Raipur for chemical testing through Constable Kacharu Ram Netam (Badge No. 500), as per the memo from Superintendent of Police, Kondagaon, dated October 23, 2017.

17. Now coming to the FSL Report; as per FSL Report, (Ex.-S1) a sealed packet containing dried plant material with greenish-brown leaves, seeds, and flowers was found, which was stated in the document to have been seized from accused Neeraj Kanaujiya and Mohd. Ikram Khan. After testing the plant material in Ex.-S1 was subjected to necessary physical, chemical, microscopic, and TLC tests, which yielded positive results for ganja (cannabis). Moreover, the appellant has failed to give plausible explanation with respect to the huge recovery of the contraband article which were recovered, hidden in a special chamber under the trolley at the rear of the vehicle and the appellant was found inside the said vehicle with the co-accused, namely, Neeraj Kanaujiya, who has absconded after the incident.
18. The defence has not been able to elicit anything in their cross-examination to discredit their testimony. Statement of Mr. Sharad



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Dubey (PW-12), Inspector is corroborated by the statements of Shekhar Patel (PW-10), Naib Tehsildar and Mahettar Netam (PW-9), Head Constable.

19. Considering the evidence available on record, also considering the statement of investigating officer Sharad Dubey (PW-12), other prosecution witnesses and seizure memo (Ex.P-9), the learned Special Judge has arrived at a finding that the appellant was found in possession of 220.990 Kgs contraband articles (Ganja) and convicted and sentenced the appellant as aforementioned. I do not find any scope for interference in the judgment impugned. Consequently, the appeal is liable to be dismissed and it is hereby **dismissed**.

Sd/-

(Ramesh Sinha)
CHIEF JUSTICE

Akhil