

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 274 of 2009**

- Sujit Kumar @ Jainarayan S/O Mahendra Prasad Sahu, aged about 62 years, R/O at present Rampur Mohalla, Baloda, R/o Village Pachaina Bazar, PS Koilvar, Distt.-Bhojpur Ara (Bihar)

---- Appellant**Versus**

- State Of Chhattisgarh through District Magistrate, Janjgir Distt. Janjgir Champa (CG)

---- Respondent

For appellant	: Mr. Avinash Singh, Adv. under instruction of Ms. Indira Tripathi, Adv.
For Respondent/State	: Ms. Shobha Kashyap, Dy. GA.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Judgment****16/04/2015**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 31-3-2009 passed by the Special Judge (under Narcotic Drugs and Psychotropic Substances Act, 1985 (in brevity 'NDPS Act') in Special Criminal Case No. 17/2008 whereby and whereunder learned trial Court after holding the appellant guilty for illicit possession of 15 kg Ganja, convicted him for offence under Section 20(b)(ii)(B) of the NDPS Act and sentenced him to undergo RI for 8 years, also to pay a fine of Rs. 50,000/- in default of payment of fine to further undergo R.I. for 3 years.
2. Conviction is impugned on the ground that without there being an iota of evidence, learned Court below has convicted and sentenced the appellant as aforementioned and thereby committed illegality.
3. As per the case of the prosecution, on 27-10-2008, P.W. 12 P.L. Naik, Excise sub-inspector, Circle Sakti received information from informant that a person aged about 60 to 65 years wearing black glasses is coming from station with ganja. He recorded the information and informed Panch witnesses about the information. At Tigadda chowk, the appellant was stopped and told regarding the information received about him of possessing ganja and that if he wish he may be searched before any gazetted officer or before any Magistrate or the IO. The appellant consented to be searched from the IO itself. He was having a bag. It was opened and physically identified as ganja. Same was measured and found 15 kg out of which 75 gm ganja was taken and three sample packets of 25 gm each were

prepared and marked as A, B and C. Sample packets and the remaining ganja were sealed and seized. Impression of the seal is taken and namuna panchnama was prepared. The appellant was arrested. IO prepared map of the spot, recorded statement of the witnesses under Section 161 of the Code of Criminal Procedure (in brevity 'Cr.P.C.'). Seized ganja was deposited under security. Two bags of the sample were sent for chemical analysis along with draft of Assistant Commissioner Excise. The FSL after examination confirmed the presence of ganja. After completion of investigation charge sheet is filed before the Special Judge. The appellant was charged for the offence under Section 20(b)(ii)(B) of the NDPS Act. He denied the charge and prayed for trial.

4. In order to provide the guilt of the accused, prosecution examined witnesses. Statement of the appellant was recorded under Section 313 of the Cr.P.C. in which he denied the circumstances appearing against him, pleaded innocence and false implication in the crime in question.

5. After providing opportunity of hearing to the parties, learned trial Court convicted and sentenced the appellant as aforementioned.

6. I have heard learned counsel for the parties and perused the impugned judgment of the trial Court.

7. Learned counsel for the appellant submitted that as instructed he is not contesting the appeal on its merit. He is confining his arguments only on quantum of sentence. At the time of incident the appellant was 62 years of age. The incident is about 6 years and 5 months old. The appellant was sentenced to undergo RI for 8 years and to pay a fine of Rs. 50,000/-, in default of payment of fine, to further undergo additional RI for 3 years. He is in custody since 27-10-2008. Though on the application for suspension of sentence, the substantive jail sentence of the appellant was ordered to be suspended during pendency of this appeal but as the appellant is not in a position to furnish bail bond, he is still in jail and he has served 6 years, 5 months and 20 days jail. He will not commit any offence in future. There is no minimum sentence prescribed for the offence under Section 20(b)(ii)(B) of the NDPS Act. Looking to his age and other facts and circumstances of the case, he may be sentenced to the period already undergone by him.

8. Per contra, learned counsel appearing for the State opposed the arguments advanced by the appellant and submitted that the judgment of conviction and sentence is well founded and looking to the quantity of ganja, the trial Court has adequately convicted the appellant. There is no scope in the judgment of conviction and order of sentence. Hence the appeal may be dismissed as not maintainable.

9. In order to appreciate the arguments advanced by the respective parties, I have perused the evidence discussed in the judgment itself as the record

of the trial Court is not available during hearing of this appeal.

10. Since the appellant is not contesting his conviction under Section 20(b)(ii)(B) of the NDPS Act and also while perusing the entire assessment of the witnesses by the trial Court mentioned in the impugned judgment, it appears that conviction of the appellant for the offence under Section 20(b)(ii)(B) of the NDPS Act is well founded. The trial Court has not committed any illegality while convicting the appellant.

11. So far as quantum of sentence is concerned, 15 kg ganja was seized from the possession of the appellant. He was aged about 62 years at the time of incident. He has served major part of sentence i.e. 6 years, 5 months and 20 days out of 8 years. Looking to the fact that the appellant is not able to furnish bail bond before the trial Court, no previous criminal history is discussed in the judgment of the trial Court, no minimum jail sentence is provided for the offence, it would be appropriate that the appellant be sentenced to the period already undergone by him.

12. Consequently, the appeal filed by the appellant is hereby allowed in part. The judgment of conviction against the appellant under Section 20(b)(ii)(B) of the NDPS Act is hereby affirmed. Fine sentence is also maintained. However instead of the substantive jail sentence of 8 years RI awarded by the trial Court, the appellant is sentenced to the period already undergone by him.

13. The appellant is in jail. If he has deposited the fine amount, he be released forthwith, if not required in any other case. If he has not deposited fine amount awarded by the trial Court, he shall undergo the jail sentence as per default clause mentioned in para 25 of the impugned judgment.

Sd/-
Chandra Bhushan Bajpai
Judge