

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 1285 of 2014**

- Vijay Singh S/o Late Ratan Singh aged about 49 Years R/o At Islampur  
Near Kanji Kunj Near Buddhukhans House P.S. Kotwali, Civil & Revenue  
District Murainia (MP)

**---- Appellant****Versus**

- State of Chhattisgarh through P.S. G.R.P. Dongargarh, District Rajnandgaon  
C.G.

**---- Respondent**


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| For appellant        | : Ms. Chitra Biswas, Adv.           |
| For Respondent/State | : Ms. Sangita Mishra, Panel Lawyer. |

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**Judgment****19/08/2015**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 15-10-2014 passed by the Special Judge (under the Narcotic Drugs and Psychotropic Substances Act, 1985 [in brevity 'NDPS Act']), Rajnandgaon in Special Case No. 17/2013 whereby and whereunder learned Special Judge after holding the appellant guilty for illicitly possessing ganja of 7 kg, convicted him under Section 20(b)(ii)(B) of the NDPS Act and sentenced him to undergo RI for 3 years along with fine of Rs. 25,000/-, in default of payment of fine to further undergo additional RI for 6 months.
2. Conviction is impugned on the ground that without there being any iota of evidence, learned court below has convicted and sentenced the appellant as aforementioned and thereby committed illegality.
3. As per case of the prosecution, on 1-7-2013 Investigating Officer P.W. 10 Surendra Ojha received an information from the informant that two persons are travelling in general coach possessing contraband substance ganja with them in Hawda-Ahmedabad Express. After recording the same, the Investigating Officer along with police party and panch witnesses reached to the spot and found two persons in suspicious condition. The IO asked for their names and address and thereafter two Investigating Officers interrogated and investigated the matter. The present appellant was having an airbag with him. He was made aware of his legal right that he can be

searched in presence of any gazetted officer or magistrate. A notice under Section 50 of the NDPS Act was given. The present appellant consented to be searched by the IO Surendra Ojha P.W. 10. After completion of mandatory provisions of NDPS Act the bag in possession of the appellant was searched. Seven kg of ganja was recovered from the bag. It was properly seized and physically examined. Weight was taken and samples were also prepared. Thereafter statement of witnesses were recorded and FIR was registered against the appellant. During investigation, samples were sent for Forensic Science Laboratory, Raipur for chemical analysis. FSL, Raipur confirmed presence of ganja in the samples. After completion of investigation, charge sheet was filed before the trial court who conducted trial. The appellant was charged for the offence under Section 20(b) of the NDPS Act.

4. In order to prove guilt of the appellant, prosecution examined 11 witnesses in all. Statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure wherein he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication in the crime in question.
5. After affording 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, perused the judgment impugned and records of the court below.
7. Learned counsel appearing for the appellant submitted that as instructed he is not contesting the appeal on merit. She is confining her arguments only on the quantum of sentence. The appellant has been sentenced RI for 3 years along with fine sentence of Rs. 25,000/-. The appellant is the first offender. He earns his bread by job of labour. He is not having any criminal past of likewise offence. He will not commit any offence in future. He is in jail since 20702013 till date, thereby he has completed 2 years, 1 months and 17 days jail sentence till date. He be given an opportunity. No minimum sentence is prescribed for the offence. Fine amount has been deposited. She submits that his sentence may be reduced to the period already undergone by him.
8. Per contra, learned counsel appearing for the State opposed the arguments advanced on behalf of the appellant and submitted that the appellant is a resident of Muraina, MP. He was travelling in a train possessing 7 kg of ganja which goes to show that either he is a carrier or he was transporting

the ganja for the purpose of illicit use and sell. Looking to the quantity of ganja, the trial Court has properly convicted and sentenced the appellant. Hence sentence being proper does not require any interference by this Court. The appeal may be dismissed on both counts.

9. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution before the trial Court.
10. After perusal of the entire evidence, I do not see any illegality or impropriety in finding of the trial court holding the appellant guilty for the offence under Section 20(b) of the NDPS Act. Therefore, the order of conviction does not require any interference.
11. As regards quantum of sentence, as submitted by learned counsel for the appellant, he is the first offender. He is labour by profession. Seven kg of ganja has been seized from him. He has remained in jail for 2 years 1 months and 17 days till date. Looking to the entire facts and circumstances of the case, in the opinion of this Court, ends of justice would be served if the appellant is sentenced to the period already undergone by him. The fine sentence may not be said to be on higher side. It is already deposited.
12. Consequently the appeal filed by the appellant is partly allowed. Conviction of the appellant for the offence under Section 20(b)(2)(B) of the NDPS Act is hereby affirmed. Fine sentence awarded to the appellant is also maintained. However substantive jail sentence awarded to the appellant is modified and instead of RI for 3 years, he is sentenced to the period already undergone by him.
13. The appellant is in jail. He be set at liberty forthwith if not required in any other case.
14. Appeal partly allowed.

Sd/-  
Chandra Bhushan Bajpai  
Judge