

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 134 of 2002**

- Banmali

---- Appellant**Versus**

- State Of Chhattisgarh

---- Respondent

For appellant	: Smt. C.K. Navrang, Adv.
For Respondent	: Ku. Sangita Mishra, Panel Lawyer

Hon'ble Shri Justice Chandra Bhushan Bajpai**Judgement****12/03/2015**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 11-1-2002 passed by the Special Judge, Jagdalpur under the Narcotic Drugs and Psychotropic Substances Act, 1985 (in brevity 'NDPS Act') in Special Case No. 43/2001 whereby and whereunder learned Special Judge after holding the appellant guilty for illegally possessing 6 kg of contraband article Cannabis (Ganja), convicted him under Section 20(b)(i) of the NDPS Act, 1985 (Prior to the Amendment in Section 20 as substituted by Act No. 9 of 2001 with effect from 2-10-2001) and sentenced to undergo R.I. for 3 years and to pay a fine of Rs. 3,000/-, in default of payment of fine, to further undergo additional R.I. for 9 months.
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 case of the prosecution, on 26-8-2001 P.W. 3 R.S. Mishra, Asstt. Sub

Inspector, Police Station Bhanupratappur received information from informant that appellant is in illegal possession of Ganja and presently looking for conveyance for going to some other place. The Investigating Officer recorded the information vide Ex. P-11 and also made entry in Rojnamcha Sanha vide Ex. P-12-C, and sent the information and Rojnamcha Sanha to his immediate superior officer Sub Divisional Officer Police, Bhanupratappur and also recorded Rojnamcha Sanha Ex. P-13-C. Carbon copy of the information is Ex. P-14. He also informed SHO of Bhanupratappur vide Ex. P-15 for further inquiry. He proceeded for spot for which he entered Ravanagi Sanha in Ex. P-16-C. He called witnesses for taking part in inquiry vide Ex. P-1. At Bhanupratappur square he saw one person making attempt to run away from the spot. He was caught by the police party. During investigation, he told his name as Banmali. Thereafter he gave notice Ex. P-2 under Section 50 of the NDPS Act regarding his legal right that he may be searched before any Magistrate or any gazetted officer or by the IO. The appellant consented to be searched by the IO vide Ex. P-3. Talasi panchnama regarding talasi of the appellant is prepared as Ex. P-4. Appellant made search of the IO and other members of the party and all witnesses. No any objectionable material was noticed during search. Thereafter the appellant was searched before panch witnesses. He was having one bag kept in his hand. Talasi panchnama is Ex. P-5. Thereafter the substance found in the bag was physically examined and found as Ganja vide Ex. P-6. The contraband article was confirmed on physical examination Ganja and on measurement it was found to be 6 kg. Taul panchnama was prepared vide Ex. P-7. Two samples of 100 gm each were prepared. All were sealed separately. Seal impression panchnama was prepared vide Ex. P-8. The Ganja recovered from the appellant along with

two separate samples, total 3 packet were seized and sealed vide Ex. P-9. The appellant was arrested vide arrest memo Ex. P-10. The Investigating Officer prepared spot map vide Ex. P-11. After returning back to PS Bhanupratappur, P.W. 3 lodged FIR vide Ex. P-18. He sent special report to his immediate superior, carbon copy of the same is Ex. P-18-C. Ganja and its sample were deposited in Malkhana receipt of which is Ex. P-19 and the receipt of special report is Ex. P-20. He informed about arrest to Judicial Magistrate First Class, Bhanupratappur vide receipt Ex. P-21. He also sent information regarding arrest of appellant to SHO Patan, Distt. Durg through radio message, carbon copy of which is Ex. P-22. The SHO sent the sample for chemical analysis to FSL, Raipur. Vide report Ex. P-23, FSL Raipur confirmed presence of Ganja.

4. After completion of investigation, charge sheet was filed before the Special Judge, Jagdalpur who conducted trial.
5. In order to prove the guilt of the appellant, prosecution examined as many as 4 witnesses. Appellant was examined under Section 313 of the Code of Criminal Procedure, 1973 (in brevity 'Code') wherein he denied the circumstances appearing against him, pleaded innocence and false implication in the crime in question.
6. After providing opportunity of hearing to the parties, learned Special Judge convicted and sentenced the appellant as aforementioned.
7. I have heard learned counsel for the parties and perused the record including the impugned judgment.
8. Learned counsel for the appellant submits that she is not contesting the appeal on the point of conviction and is confining her argument only on the point of quantum of sentence. The incident is about 14 years old. The

appellant was first offender. He was 28 years of age at the time of incident having no previous history of similar offence in the charge sheet. Even after this incident, he has not involved himself in similar criminal activities. He is a poor person earning his bread by job of labour. He has already remained in jail from 26-8-2001 to 10-3-2003 i.e. one year, six months and 14 days. By this he has served more than $\frac{1}{2}$ of sentence awarded to him. He will not commit any other likewise offence in future. In the circumstances, it would be just and proper to punish him for the period already undergone by him.

9. On the other hand, learned counsel for the State opposed the bail and supported the quantum of sentence awarded to the appellant and submitted that looking to the quantity of Ganja seized from the appellant, the trial Court has rightly sentenced the appellant for 3 years. Hence the appeal being devoid of merit may be dismissed.
10. In order to appreciate the arguments advanced, I have perused the evidence available on record.
11. As regards question of conviction is concerned, upon perusal of the evidence and entire record and judgment of the court below and since the appellant is not contesting this appeal on merit for conviction, I do not find any illegality or infirmity in the finding of the trial Court. Therefore, the order of conviction under Section 20(b)(i) of the NDPS Act (prior to substitution of Act 9 of 2001 with effect from 2-10-2001) passed by the trial Court is hereby affirmed.
12. So far as quantum of sentence is concerned, the appellant has been sentenced to undergo R.I. for 3 years and to pay a fine of Rs. 3000/- under Section 20(b)(i) of the NDPS Act. The trial Court for offence under Section 20(b)(i) may award RI upto 5 years and also fine sentence, but no minimum

sentence is provided under this section. The present incident is about 14 years old. For all these 14 years, the appellant is facing and contesting trial. The appellant is a poor labour with no criminal history regarding illicit possession of Ganja shown in the charge sheet. As submitted by learned counsel for the appellant, after this incident, he had not involved himself in any other similar activities. Also the appellant has already served a part of sentence. Since no minimum sentence for offence under Section 20(b)(i), NDPS Act (prior to amendment by Act 9 of 2001 with effect from 2-10-2001) is provided, and appellant has served 1 year six months and 14 days sentence, I am of the opinion that it would not be proper to send the appellant again to jail for serving remaining part of the sentence. Object of criminal justice would be served if he is sentenced to the period already undergone by him.

13. Consequently, the appeal is partly allowed. Conviction of the appellant under Section 20(b)(i) of the NDPS Act is affirmed. Fine sentence is also affirmed. However substantive jail sentence awarded to the appellant is modified and instead of RI for three years, the appellant is sentenced to undergo RI for the period already undergone by him.

14. Appellant is reported to be on bail. His bonds shall continue for a further period of six months as per provisions of Section 437-A of the Code.

JUDGE