

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No. 832 of 2015**

Arjun Sonkar S/o Jhurkun Sonkar aged 22 years, residence of Joda Talab Sheetla Ward Ambikapur, Thana Ambikapur, Civil & Revenue, District Surguja, Chhattisgarh.

---- Appellant**Versus**

State of Chhattisgarh through the District Magistrate, Ambikapur, District Surguja, Chhattisgarh.

---- Respondent

For Appellant	:	Shri Sunil Sahu, Advocate.
For the Respondent/ State	:	Ms. Sangeeta Mishra, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Judgment on Board****25/08/2015**

- (1) Heard on admission.
- (2) The instant criminal appeal is preferred after 20 days of its limitation.
- (3) Also heard on I.A. No. 1 of 2015 for condonation of delay in filing the instant criminal appeal, as the same is preferred after 20 days of its limitation.
- (4) For the reasons mentioned in I.A. No. 1 of 2015 , the Court is satisfied that the delay has been satisfactorily explained. Consequently, I am not inclined to dismiss the instant criminal appeal as it is time barred for 20 days of its limitation.
- (5) On due consideration, I.A. No. 1 of 2015 is allowed and the delay of 20 days in filing the appeal is hereby condoned.
- (6) The appeal is admitted for consideration.

(7) Learned counsel for the Appellant submits that looking to the higher side of substantive jail sentence and the seized quantity of diacetylmorphine psychotropic substance/drug which was a bit higher than a small quantity, the Appellant is not contesting the instant criminal appeal against the conviction imposed upon him, but he is only confining his arguments to the sentence awarded by the trial Court. Hence, the appeal may be heard finally.

(8) With the consent of both the parties, the appeal is heard finally.

(9) In view of the above, I.A. No. 2 of 2015, an application for suspension of sentence and grant of bail to the Appellant stands disposed of.

(10) Challenge in this appeal is to the judgment of conviction and order of sentence dated 10.4.2015 passed by the Learned Special Judge, Narcotic Drugs and Psychotropic Substances Act, 1985 (in brevity 'NDPS Act') in Sessions Trial No. 27 of 2012, whereby and whereunder the learned trial Court after holding the Appellant guilty for illegal possession of 5 gms 700 mgs of diacetylmorphine (brown sugar), convicted him for offence under Section 21(b) of the NDPS Act and sentenced him to undergo RI for 10 years, also to pay a fine of ₹1,00,000/- in default of payment of fine to further undergo R.I. for one year.

(11) 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.

(12) As per case of the prosecution, on 27.10.2012, R.K. Nishad, Sub-Inspector, the Investigating Officer (the IO) received information from the informant that the Appellant was in illegal possession of diacetylmorphine (brown sugar) and was looking for the customer. On receiving the said information, the IO prepared a Panchnama and thereafter called Panch witnesses. The information was given to the CSP, Ambikapur through written communication and also by telephone. Looking to the emergent circumstances, the IO, without obtaining a search warrant, proceeded to the spot along with police party. The IO informed the Appellant of his rights regarding search. The Appellant gave his consent to be searched by the IO himself. The IO searched the Appellant who was sitting in the courtyard of his house as per rules and recovered diacetylmorphine (brown sugar) from the pocket of the Appellant. On physical examination, the recovered article was found to be brown sugar. Thereafter, the IO conducted the entire investigation and on being weighed found that the weight of brown sugar was 5 gms and 700 mgs. The same was duly seized and sealed. After completion of the investigation, charge-sheet was filed before the Special Judge. The Appellant was charged for the offence under Section 21(b) of the NDPS Act. He denied the charge levelled against him, pleaded innocence and demanded for trial.

(13) In order to prove the guilt of the Appellant, the prosecution examined eight 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.

(14) After providing opportunity of hearing to the parties, Learned trial Court convicted and sentenced the Appellant as aforementioned.

(15) I have heard Learned counsel for the parties, perused the judgment impugned.

(16) Learned counsel appearing on behalf of the Appellant submitted that as per the instructions received from the Appellant, he is not contesting the appeal on its merit. He is confining his arguments only to the quantum of sentence. At the time of incident, the Appellant was a young boy of 22 years of age with no criminal antecedents and only 5 gms and 700 mgs of diacetylmorphine (brown sugar) was seized from him. As per the provisions of the NDPS Act, the small quantity of diacetylmorphine/drug is 5 gms. Above 5 gms to 250 gms of quantity is defined as lesser than commercial quantity but greater than small quantity. Above 250 gms falls under the category of commercial quantity. The quantity seized from the Appellant was a little higher than the small quantity. Even then the Appellant has been sentenced with maximum RI and the fine sentence awarded to him is also on higher side. It was lastly submitted that looking to the facts and circumstances of the case, the sentence imposed upon the Appellant may be reduced suitably.

(17) On the other hand, learned counsel for the Respondent/State, opposing the submission advanced on behalf of the Appellant, submitted that though the quantity of the recovered drug is lesser than the commercial quantity but is greater than the small quantity for which he was rightly sentenced and the reason given for imposing such sentence by the trial Court seems to be appropriate and acceptable. Hence, there is no scope for interference with award of sentence and the prayer made

in this behalf may be rejected.

(18) In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution.

(19) So far as the order of sentence is concerned, the Appellant, at the time of his arrest, was a young boy of 22 years. No previous case history was shown or investigated. During the investigation of the present case, it reveals that the Appellant was not having any criminal antecedents regarding the same offence. From his conscious and exclusive possession, 5 gms and 700 mgs of diacetylmorphine was recovered which is just 700 mgs higher than the small quantity. There is no minimum sentence prescribed under Section 21(b) of the NDPS Act and from perusal of the table given in the NDPS Act, it reveals that within the purview of Section 21(b) of the NDPS Act possession of upto 250 gms quantity of diacetylmorphine is an offence and the Appellant was in a possession of just above the small quantity and he was sentenced with RI for 10 years and to pay fine of ₹1,00,000/-.

(20) Looking to the entire facts and circumstances of the case, the offence committed, the age of the Appellant and that the Appellant was the first offender, in the considered view of this Court, the sentence part requires interference by reducing the sentence awarded by the trial Court as it has not followed the doctrine of awarding proper sentence.

(21) On due consideration, I am of the view that the period already undergone by the Appellant against the sentence awarded to him by the trial Court would meet the ends of justice.

(22) Consequently, the appeal filed by the Appellant is allowed in part. The conviction awarded against the Appellant is hereby affirmed.

However, the substantive jail sentence of 10 years awarded to the Appellant is hereby reduced to the period already undergone by him, i.e., from 28.10.2012 till today. The fine sentence of ₹1,00,000/- awarded by the trial Court is also modified and reduced. Now, the Appellant, instead of the fine of ₹1,00,000/-, shall pay fine of ₹10,000/- only and in default of payment of the fine, he shall further undergo additional RI for four months.

(23) The Appellant, on his depositing the fine of ₹10,000/-, shall be released forthwith, if not required in any other case. In case, the amount of fine of ₹1,00,000/- awarded by the trial Court has already been deposited by the Appellant, the amount of fine of ₹10,000/- shall be adjusted against the said deposit of fine and the balance amount of ₹90,000/- shall immediately be refunded to the Appellant. If the Appellant fails to pay the amount of fine awarded by this Court, he shall be liable to undergo the jail sentence as per the default clause mentioned in this judgment.

Sd/-

(Chandra Bhushan Bajpai)
JUDGE