

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.168 of 2012**

Gajendra Sen, aged 21 years, S/o. Ramdayal Sen, aged about 21 years,
R/o. Ganjbasouda, District Vidisha (M.P.)

---- Appellant

Versus

State of Chhattisgarh, through Station House Officer, Police Station GRP
Raipur(CG)

---- Respondent

Shri Shivendu Pandya, counsel for the appellant.
Ms. Sangeeta Mishra, Panel Lawyer for the State.

Judgment On Board**18/9/2015**

Challenge in this appeal is to the judgment of conviction and order of sentence dated 16.12.11 passed by Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act'), Raipur in Special Criminal Case No.42/11 whereby and whereunder the learned Special Judge after holding the appellant guilty for illicit possession of 13 kg of ganja, convicted him under Section 20(b)(ii)(B) of the NDPS Act and sentenced him to undergo rigorous imprisonment for five years and to pay fine of Rs.25,000/-, in default of payment of fine, to further undergo RI for one month.

2. Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted and sentenced the appellant as aforementioned, thereby committed illegality.

3. As per the case of the prosecution, on 11.5.2011, Station House Officer SS Shukla, GRP Raipur received information from informer that a person travelling in general bogie of Samta Express is in possession of ganja in two bags. The investigating officer (PW-5) called the panch witnesses and prepared the information and recorded it in *sanha* and

also prepared information of the informant and for the search without obtaining search warrant. He accordingly informed his superior official regarding information. He along with staff and panch witnesses reached to the spot and found the appellant in the general bogie of the train and thereafter after obtaining information regarding name and address of the appellant, he gave notice under Section 50 of the NDPS Act regarding his legal rights as he may be searched before any gazetted officer or Magistrate, if he wish so. The appellant gave his consent to be searched by the investigating officer itself. Thereafter the IO had taken the search of two bags which were in the possession of the appellant and noticed 13 kg illicit substance like ganja. On physical examination, he confirmed the presence of ganja. He has taken the sample and the remaining ganja was seized and sealed. He also lodged First Information Report and after entire investigation including the report from the FSL for the sample wherein the presence of ganja were confirmed, charge sheet was filed before trial court for trial. The trial Court framed the charges for the offence, the appellant denied the charges and prayed for trial.

4. In order to prove the guilt of the appellant, prosecution has examined six witnesses in all. The appellant was examined under Section 313 of the Code of Criminal procedure, 1973 (for short 'the Code'), wherein he denied the circumstances appearing against him, pleaded innocence and false implication in crime in question.

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

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

7. Learned counsel for the appellant submits that as directed, he is not assailing the instant criminal appeal on its merits as he is confining his argument only on the point of quantum of sentence only. He further submits that the appellant has been sentenced for RI for five years along with fine sentences and he is in jail since 11.4.11, thereby he has served RI for 4 years 4 months and 11 days. At the time of incident, he was aged about 20 years, he is not having any criminal history, he will not commit any offence in future and he may be given opportunity looking to the period he has already served.

8. On the other hand, learned counsel for the State opposed the appeal and submitted that looking to the act of the appellant as he was in illicit possession of 13 kg of ganja, the trial Court has adequately sentenced and there is no scope for any interference, hence the appeal may be dismissed.

9. The appellant is not assailing the appeal on its merits regarding his conviction part. Even after perusal of the entire evidence, I do not see any illegality or impropriety in the judgment for holding the appellant guilty for the offence. Consequently, conviction against the appellant requires no interference. So far as the quantum of sentences are concerned, the appellant has been sentenced for RI for five years and to pay fine of Rs.25,000/- with default stipulations. So far as the substantive jail sentences are concerned, till date the appellant has served major part of the sentence for four years four months and seven days. Looking to the fact that he is the first offender, young boy of 21 years old at the time of incident and a prayer that he will not commit any offence in future, in the considered view of this Court, the period already undergone by him would meet the purpose and it would be just and proper.

10. Consequently, the appeal is allowed in part. Judgment of conviction under Section 20(b)(ii)(B) of the NDPS Act is hereby affirmed. Fine sentence imposed against the appellant cannot be held as excessive, hence, the same is also affirmed. So far as the substantive jail sentences are concerned, instead of RI for five years, he is sentenced to undergo for the period already undergone by him. It is stated that the appellant is in jail. He be released forthwith if not required in any other case after realizing all the fine sentence as awarded by the trial Court. If the fine sentence is not paid on behalf of the appellant, the appellant be served with the default sentence as ordered in para 28 of the judgment of the trial Court.

Sd/-

(Chandra Bhushan Bajpai)
JUDGE