

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No. 996 of 2015**

Deepak Barman son of Susheel Barman, aged about 26 years,
resident of Ghat Semariya, police station Sihore, District Jabalpur,
M.P.

---- Appellant**Versus**

State of Chhattisgarh through Station House Officer, police
station Masturi, District Bilaspur, Chhattisgarh.

---- Respondent

For Appellant	:	Shri Varunendra Mishra, Advocate.
For Respondent/ State	:	Shri Sanjeev Kumar Agrawal, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Judgment on Board****26/08/2015**

(1) Challenge in this appeal is to the judgment of conviction and order of sentence dated 4.8.2015 passed by the Learned Special Judge, Narcotic Drugs and Psychotropic Substances Act, 1985 (in brevity 'NDPS Act') in Sessions Trial No. 22 of 2013 whereby and whereunder the learned trial Court after holding the Appellant guilty for illegal possession of 6 kgs Ganja (cannabis), convicted him for offence under Section 20(b)(ii)(B) of the NDPS Act and sentenced him to undergo RI for 2 years, also to pay a fine of ₹20,000/- in default of payment of fine to further undergo additional R.I. for four 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 20.06.2013, Inspector - R.P. Tiwari (PW-7), the Investigating Officer (the IO) received information from

an informant that a suspect is traveling in a bus from Sheorinarayan Mulmula towards Bilaspur and keeping illegal substance in his bag. On receiving the said information, the IO recorded the information, completed necessary formalities and sent the information to senior official, namely, Deputy Superintendent of Police. Thereafter, along with Panch witnesses the police reached to the spot where the Appellant was present. On being asked, the Appellant disclosed his name and address. The IO served a notice under Section 50 of the NDPS Act on the Appellant regarding his rights about search before any gazetted officer or before any Magistrate or by the IO himself. The Appellant consented to be searched by the IO himself. Thereafter, the search was conducted and the objectionable substance was recovered from the bag which was in possession of the Appellant. On physical examination, the recovered material was identified as Ganja. The same was duly seized and was duly weighed. Thereafter, the IO lodged the First Information Report against the Appellant. The Appellant was arrested and the seized substance was sent for chemical analysis. After completion of the investigation, charge-sheet was filed by the concerned Masturi Police Station 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 framed against him, pleaded innocence and demand for trial.

(4) During trial, in order to prove the guilt of the Appellant, the prosecution examined nine witnesses. No witness was examined in defence by the Appellant during trial. Statement of the Appellant was recorded under Section 313 of the Code of Criminal Procedure, 1973 (for short 'the Code') 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, perused the judgment impugned and records of the Court below.

(7) Learned Counsel appearing on behalf of the Appellant submitted that as instructed by the Appellant, he is not contesting the appeal against the conviction imposed upon the Appellant, but is confining his arguments only to the quantum of sentence awarded. At the time of incident, the Appellant was aged about 26 years with no criminal antecedents of the like offence shown in the charge-sheet. He is the first offender. He has served the jail sentence from 21.6.2013 to 2.7.2014 during trial and is also serving the sentence from the date of pronouncement of the judgment till today. Thus, he has already served the sentence for 1 year 1 month and 3 days. He will not commit similar offence in future. There is no minimum sentence prescribed for the offence. It was lastly submitted that looking to the facts and circumstances of the case, the sentence may be reduced to the period already undergone. The Appellant be given an opportunity to live peacefully in the village and society. Hence, the sentence imposed upon the Appellant may be reduced suitably.

(8) On the other hand, Learned Counsel for the Respondent/State, opposing the submission advanced on behalf of the Appellant, submitted that the Appellant is resident of Police Station Sihore, District Jabalpur, Madhya Pradesh and he was arrested while keeping 6 kgs of Ganja in his bag. Looking to the above fact, the trial Court has rightly sentenced

the Appellant. Hence, there is no scope for interference in the sentence and the prayer made in this behalf may be rejected.

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

(10) So far as the order of sentence is concerned, the Appellant, at the time of his arrest, was aged about 26 years. No previous case history was shown or investigated against him. During the investigation of the present case, it reveals that the Appellant was not having any criminal antecedents regarding the same offence. The Appellant was in illegal possession of 6 kgs of Ganja and he has already served 1 year 1 month and 3 days of jail sentence till today.

(11) As the Appellant is not contesting this appeal against the conviction imposed upon him, even otherwise on perusal of the entire evidence, it is apparent that the trial Court has not committed any illegality and impropriety in convicting the Appellant, which requires no interference. Consequently, the judgment passed by the trial Court regarding conviction against the Appellant requires no interference. Hence, the same is affirmed.

(12) Consequently, the appeal filed by the Appellant is allowed in part. The conviction awarded against the Appellant is hereby affirmed. Fine sentence awarded by the trial Court is also hereby affirmed. So far as substantive jail sentence awarded to the Appellant is concerned, the sentence is modified and instead RI for 2 years, the Appellant is now sentenced to the period already undergone by him.

(13) The Appellant be released forthwith, if not required in any other case. If the fine amount ordered by the trial Court is not deposited, the Appellant shall serve the default sentence of four months' rigorous imprisonment and in case the Appellant deposits the amount of fine before completion of the default sentence of four months, he shall be released forthwith.

Sd/-

(Chandra Bhushan Bajpai)
JUDGE

Nimmi