

**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRA No. 1237 of 2015**

1. Basant Verma @ Aate S/o Late Shri Sonaram Verma @ Rujhoo, aged about 23 years, R/o Village Maldi, Police Station Bilaigarh, Civil and Revenue District Balodabazar - Bhatapara Chhattisgarh.

**----Appellant**

**Versus**

1. State of Chhattisgarh Through Police Station Bilaigarh, District Balodabazar - Bhathapara Chhattisgarh.

**---- Respondent**

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For Appellant – Shri Anil Singh Rajput, Advocate.

For Respondent – Shri Lav Sharma, Panel Lawyer.

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**Hon'ble Shri Justice Chandra Bhushan Bajpai**

**Judgment on Board**

**08/10/2015**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 29-09-2015 passed by the Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') and First Additional Sessions Judge, Balodabazar, District Balodabazar (CG) in Special Criminal (NDPS) Case No.02/2014 whereby and whereunder the learned Special Judge after holding the appellant guilty for illicit possession of 3 kg. of ganja, convicted him under Section 20 (b) (ii) B of the NDPS Act and sentenced him to undergo R.I. for 2 years and to pay fine of Rs. 15,000/-, in default of payment of fine to undergo additional R.I. for 3 months.

2. The conviction is impugned on the ground that without there being any iota of evidence, the Court below has convicted and

sentenced the appellant as aforementioned and thereby committed illegality.

3. As per case of the prosecution on 28-09-2014, ASI, N.K.Sahu (PW-6), the Investigating Officer, received information from the informant that the appellant is reaching to his village along with illegal substance ganja and if no any immediate action be taken, the said ganja may be disposed of or the appellant may abscond. The Investigating Officer recorded the information and informed his superior officials for the immediate action and thereafter along with Police party and panch witnesses reached to the spot. He saw the appellant coming on a cycle with some substance in white colour plastic bag in the carrier. Thereafter, the Investigating Officer served the appellant with a notice under Section 50 of the NDPS Act regarding his legal rights to be searched before a Magistrate or Gazetted Officer. The appellant consented to be searched by the Investigating Officer. Thereafter, Investigating Officer N.K.Sahu (PW-6) searched the white plastic bag and he noticed some objectionable material inside the plastic bag. On physical examination, the same was confirmed as ganja. Thereafter, after taking weight of the said ganja which was 3 kgs., he took out the samples, duly sealed and seized the samples and the remaining ganja and arrested the appellant. Thereafter, First Information Report was lodged and the the samples were sent for chemical analysis. After completion of the investigation, charge-sheet was filed before the Special Judge. The learned Special Judge framed charges under Section 20(b) of NDPS Act. The appellant denied the charges and requested for trial.

4. In order to prove the guilt of the appellant, prosecution examined 6 witnesses in all. The statement of the appellant was recorded under Section 313 Code of Criminal Procedure, 1973 (in short 'the Code') wherein he denied the circumstances appearing against him and pleaded innocence and false implication in the crime in question.

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

6. Learned Counsel for the appellant submitted that as directed he is confining the argument to the quantum of sentence only and as directed he is not challenging the judgment of conviction passed against the appellant by the trial Court. As prayed, the appellant is in jail since 29-09-2014 to till date thereby served the sentence for 1 year and 9 days, he is the first offender with no previous criminal history for any offence, he is aged about 23 years at the time of incident; he will not commit any likewise offence in future, therefore, he be given opportunity to remain in society as a law abiding people; he had tested overall post effect of the act he committed, hence, he be given an opportunity and he be sentenced accordingly.

7. On the other hand, learned counsel for the State opposed the arguments advanced on behalf of the appellant and submitted that from known and conscious possession of the appellant 3 kgs. of ganja was recovered. Looking to the quantity and conduct of the appellant, the appeal may be dismissed on both counts.

8. In order to appreciate the arguments advanced on behalf of the parties, I have perused the impugned judgment and the facts mentioned in the memo of appeal.

9. From the perusal of the entire material, it goes to show that the appellant is the first offender with no previous criminal history, aged about 23 years at the time of incident; 3 kgs. of ganja was seized from his possession. The appellant is not contesting the appeal for the judgment of conviction passed against him. Even otherwise, after perusal of the judgment impugned and the material available, I do not see any illegality or impropriety in the judgment of conviction passed by the trial Court against the appellant, hence, it does not require any interference. Also nothing submitted regarding fine sentence and even after perusal, looking to the ganja so seized, the fine sentence awarded by the trial Court cannot be held as excessive, consequently, the same also not requires any interference.

10. So far as quantum of substantive jail sentence is concerned, there is no minimum sentence prescribed for the offence under Section 20(b)(ii)(B) of the NDPS Act, looking to the age and the fact that he is the first offender and he prayed for an opportunity for not committing any offence in future, in the considered view of this Court, as he also served sentence for 1 year and 9 days, sentence for the period already undergone by him would meet the ends of justice.

11. Consequently, the appeal is partly allowed. The conviction of the appellant under Section 20 (b) (ii) B of the NDPS Act and fine sentence are hereby affirmed. So far as substantive jail sentence is concerned, instead of R.I. for 2 years the appellant is sentenced for the period

already undergone by him. The appellant is in jail. He be set at liberty forthwith after realization of the fine. If fine is not paid on behalf of the appellant, the authorities are directed to serve the default sentence till realization of the fine.

12. The appeal is partly allowed.

Sd/-

**(Chandra Bhushan Bajpai)**  
**JUDGE**