

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**  
**Criminal Appeal No. 903 of 2015**

Pritam Patel S/o Hiralal, aged about 26 years, R/o Bahuripara, PS and District Narsinghpur, Madhya Pradesh.

---- Appellant

**Versus**

State of Chhattisgarh, Through Police Station Darbha, District Bastar, Chhattisgarh.

---- Respondent

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For Appellant : Shri S.C.Verma, Advocate.  
 For Respondent/State : Smt. Smita Ghai, Panel Lawyer.

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**Hon'ble Shri Deepak Gupta, Chief Justice**

**Order on Board**

**29/07/2016**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 30-4-2015 passed by the Special Judge (Narcotic Drugs and Psychotropic Substances Act [in short 'NDPS Act']) Jagdalpur (CG) in Special Case no. 02/2014 whereby and whereunder learned Special Judge after holding the accused guilty for illegally possessing 16 Kg. of Ganja convicted him under Section 20(b)(ii)(B) of the NDPS Act and sentenced him to undergo RI for 5 years and to pay a fine of Rs. 5,000/-, in default of payment of fine, to further undergo additional RI for 5 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 29.03.2014, at about 9.30 am, Shri Durgesh Kumar Sharma (PW-12) working as Sub Inspector at Police Station

Darbha District Bastar, received an information from the informant regarding transportation of illegal substance 'Ganja' by few persons and that they are travelling in a bus. The information of the informant was duly recorded by him in the Roznamchasana and thereafter, the Investigating Officer (for brevity "the IO"), (PW-12) alongwith other police staffs and the Panch witnesses reached to the spot and in the said bus, gave him notice and he further informed the Appellant regarding his legal rights and that if he wishes, the search may be conducted in presence of Magistrate/Gazetted Officer or by the IO himself. The Appellant consented to be searched by the IO himself. Thereafter, PW-12, Durgesh Kumar Sharma made the search in presence of the witnesses and the police personnel. The IO noticed some illegal substance in possession of the Appellant. On physical examination, the said substance was identified as Ganja and thereafter, the bags and the said substance were duly recovered, seized and weighed. The said Ganja was 16 Kg. The IO duly drew the sample and sealed the same. The seized Ganja was kept in the safe custody of Maalkhana. Subsequently, the sample was sent for chemical analysis to FSL. The FSL after examination confirmed the presence of Ganja in the sample. The inventory of the seized articles was duly prepared and also conducted the proceedings for preparation of the said inventory, photographs and the other matter, as required under Section 52-A of the NDPS Act.

4. After completion of investigation, charge sheet has been filed before the Special Judge, NDPS Act. The Appellant was charged for the offence under Section 20(b)(ii)(B) of the NDPS Act. He denied the charge and prayed for trial.
5. In order to prove the guilt of the Appellant, the prosecution examined as many as 12 witnesses in all. The accused was examined under Section 313 CrPC in which he denied the circumstances appearing against him, pleaded innocence and false implication in the crime in question.

6. After affording opportunity of hearing to the parties, the trial Court has convicted and sentenced the Appellant as above.

7. I have heard learned counsel for the parties, perused the judgment impugned and records of the Court below.

8. Learned counsel for the Appellant submits that as per instructions received, the Appellant is not contesting the appeal on its merits whereby and whereunder he has been found guilty under Section 20(b)(ii)(B) of the NDPS Act. Learned counsel submits that he is confining his arguments on the question of quantum of sentence only. He next submits that the Appellant is the first offender, no criminal antecedents reported or surfaced in the charge sheet. The Appellant is in custody since 29.03.2014 till date, thereby, he served the sentence for about 2 years 4 months. He will not commit any similar or other offence in future. There is no minimum sentence prescribed for the offence and he has suffered by lot by languishing in jail for about 2 years and 4 months. It was lastly submitted that looking to the facts and circumstances of the case, the sentence may be reduced to the period already undergone by him. Learned counsel submits that the Appellant will deposit the fine amount, if not deposited. The Appellant be given an opportunity to remain in the society without committing any breach of law. Hence, he be accordingly sentenced.

9. Per contra, learned State counsel opposes the argument advanced on behalf of the Appellant and submits that looking to the quantity of the Ganja, i.e. 16 Kg. seized from the conscious possession of the Appellant clearly goes to show that he was deliberately transporting the said Ganja for the purpose of sale and illegal use. The trial Court has rightly sentenced the Appellant and as such, there is no scope for interference in the sentence and the prayer made in this behalf may be rejected.

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

**11.** From perusal of the entire facts, it reveals that the Appellant is the first offender with no criminal antecedents regarding the same offence or any other offence, he is in jail for about 2 years and 4 months and only 16 Kg of Ganja has been recovered from him and has prayed for an opportunity to remain in the society without involvement in any crime in future. Looking to the entire facts and as the Appellant is not assailing his conviction as well as fine sentence, this Court need not go into merits in this regard.

**12.** So far as perusal of the entire evidence adduced by the prosecution and other facts and circumstances and also taking the arguments advanced on behalf of the Appellant is concerned, I do not find any illegality or impropriety in the judgment of conviction and imposition of fine sentence passed against the Appellant. I am of the view that there is no scope for interference with the conviction of the Appellant and the conviction and fine part is liable to be affirmed.

**13.** So far as the quantum of jail sentence is concerned, the Appellant construed that he will deposit the fine amount if not already deposited and he also prayed that as he has already served the sentence for about 2 years 4 months, and there is no minimum sentence prescribed, he had prayed that he be given an opportunity so that he may remain in the society following law, looking to the entire facts and circumstances, I am of the view that the substantive jail sentence be reduced for the period already undergone, would serve the purpose in the matter and would be sufficient to meet the ends of justice.

**14.** Consequently, the appeal filed by the Appellant is partly allowed. Conviction of Appellant and fine sentence awarded to the Appellant under Section 20(b)(ii)(B) of the NDPS Act is hereby affirmed. However, the jail sentence awarded to the Appellant is modified/reduced and instead RI for five

years, the Appellant is sentenced for the period already undergone by him. It is stated that the Appellant is presently languishing in jail. The authorities concerned are directed to release the Appellant forthwith after depositing the fine amount so directed by the trial Court, if he is not required in connection with any other criminal matter. If the Appellant fails to deposit the fine amount as directed, the Appellant be served with the default sentence.

**15.** Copy of the judgment may be submitted by the Appellant before the trial Court for compliance, as directed.

**16.** Registrar (Judicial) is also directed to transmit the copy of the judgment immediately for compliance.

**17.** In view of the above, the appeal is partly allowed.

Sd/-

(Deepak Gupta)  
**CHIEF JUSTICE**