

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No.380 of 2014**

- Monu @ Ajay Khatik S/o Kailash Khatik, Aged about 26 years, R/o Lohangi Mohalla, Near Pani Tankie, District-Vidisha (M.P.), Civil & Revenue-District-Vidisha-(M.P.)

---- Appellant**Versus**

- The State Of Chhattisgarh, Through-P.S. Pailikhand (Jugad), Distt.Gariyaband-(C.G)

---- Respondent**and****CRA No. 381 Of 2014**

- Udam Singh S/o Navneet Ram Ahirwar, Aged about 46 years, R/o Khari phatak, Near Sindhi Aata Chakki, Vidisha (M.P.), Civil & Revenue-District-Vidisha-(M.P.)

-----Appellant**Vs**

- The State Of Chhattisgarh, Through-P.S. Palikhand (Jugad), Distt.Gariyaband-(C.G.)

---- Respondent

For the Appellants :Shri Suresh Tandon, Advocate in both the appeals.
For the State/Respondent :Shri Neeraj Sharma, Dy. Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****07/11/2016**

1. Both appeals are preferred from a common judgment passed in Special Criminal Case No.33/2012 by Special Judge, NDPC Act,1985 Raipur on 04.09.2013 in which both the appellants have been convicted under Section 20(b)(ii)(B) of NDPS Act, 1985 (for short 'the Act') and sentenced to undergo RI for 5 years, along with fine of Rs.5,000/-.

2. ASI, Love Kanwar (PW-7) posted in PS-Payalikhand (Judad), received information on 07.09.2012 from an informer, that two persons by name-Udham Singh and Monu @ Ajay Khatik resident of Vidisha, are carrying Ganja and travelling in a bus no.C.G. 04/E-2544. After recording Panchanama and sending information to SDO Police, Mainpur, Love Kanwar(PW-7) proceeded towards the main road of Village-Jugad, on arrival of bus No.C.G. 04/E-2544 at about 7 a.m. in the morning it was stopped, in which appellants of both the cases were found travelling and having in their possession three bags. Appellants along with their bags were apprehended and a notice under Section 50 of NDPS Act (ExP/2) was given to them. Appellants consented to be searched by the Police Officer present vide ExP/3. The members of raid party and the witnesses were searched vide EX-4 and Ex.P/5, in which no objectionable substance was found in possession of them. Vide Ex-P/6 and Ex.P/7 bags in possession of appellants in both the cases were searched, in which the packets of narcotic substance looking like Ganja was recovered. A recovery memo ExP/8 was recorded separately in presence of appellants and witnesses, the contents of packets were identified vide Ex.P/9 to be narcotic substance Ganja. The contents of packets were taken out and mixed vide memo ExP/10 and Ex.P/11. A weighment punchmama was carried out of the articles recovered from both the appellants separately vide Ex.P/13 and Ex.P/14. 19.200kg Ganja was found in possession of appellant Udham Singh and 17.200kg Ganja was found in possession of appellant Monu @ Ajay Khatik. Appellant in both the cases were searched further vide memo No.Ex-P15. Narcotics substance recovered from each appellant, was packed and sealed vide Ex.P-16. Articles was seized vide seizure memo ExP-17 from the appellant Udham Singh and articles were seized vide seizure memo Ex.P-18 from appellant Monu @ Ajay Khatik. Other articles found in search were seized from the appellant Udham Singh vide ExP-19. Other articles found in search of appellant Monu @ Ajay Khatik were seized vide Ex-P/20. Spot map was prepared by Investigating Officer

and on request of the investigating Officer, it was prepared vide Ex.P-24 by Revenue Officer. Seized articles were sent for FSL examination. Vide FSL report Ex.P/25 it was confirmed that the articles seized from both the appellants was narcotic substance Ganja. Dehati Nalishi (Ex.P-35) was recorded on the spot and on its basis numbered FIR Ex.P/36 was recorded in police-station Payalikhand (Jugad) Distt.-Gariyaband.

3. On completion of investigation both the appellants were charge-sheeted. Special Court charged the appellants under Section 20(b)(ii) (B) the NDPS Act, to which both denied. After conducting the trial impugned judgment was passed in which the appellants have been convicted and sentenced, as mentioned above.
4. Grounds in both the appeals are these that both the appellants are innocent persons, who have been implicated falsely. Learned trial Court has not appreciated of evidence of prosecution, in a proper manner. The omission and contradiction is in the statement of witnesses has been overlooked. Witnesses have not supported the prosecution case, hence, appellant in both the cases are entitled to benefit of doubt.
5. During the argument, learned counsel for the appellants submits tht appellants were taken into custody on 07.09.2012 and since then they are continuously in jail custody till today. The calculated period of custody comes out 4 years and 2 months, looking to the sentence awarded to appellants in each case which is 5 years RI, it is prayed that the sentence of imprisonment may be modified to the period of custody already undergone by them. A request also have been made to reduce the fine amount.
6. Learned counsel on behalf of the State has opposed the proposed argument of the learned counsel for the appellants and submitted that the sentence of imprisonment and fine awarded by the trial Court is just and proper and there is no reason to interfere with the impugned judgment.

7. As the appellants in both the cases are not pressing on the grounds in appeal against the finding of conviction by the trial Court, hence, it is no need to consider the prosecution evidence on the grounds of legality and admissibility. Trial Court has discussed the evidence of prosecution at length and given a conclusion that appellants Udam Singh and Monu @ Ajay were in possession of the narcotic substance Ganja at the relevant point of time, on the basis of which each of the appellants have been convicted under Section 20(b)(ii)(B) of NDPS Act, 1985. After the stand taken by the appellants at this stage, finding of conviction given by the trial Court is confirmed hereby.
8. Considering the prayer made in this appeal for modifying the sentence which is awarded to the appellant in each case, it is found that the period of sentence undergone so far is more than 80% of imprisonment awarded by the trial Court has been already undergone by the appellant in both the cases, Under Section 20(b)(ii)(B) of NDPS Act, 1985 provides, that when production, manufacture and possession of narcotic substance Ganja involving quantity lesser than commercial quantity but greater than small quantity it would be punishable with imprisonment which may extend to 10 years and with fine which may extend to Rs.1,00,000/-. The commercial quantity for Ganja as per the notification specifying the small quantity and commercial quantity in Serial No. 55, the small quantity is 1000gm and the commercial quantity is 20kg or more. The quantity of Ganja in possession of appellant in both the cases has been marginally short from the commercial purpose.
9. In these circumstances, seeing that substantial portion of the sentence of imprisonment awarded to the appellant in each case has been undergone, a relaxation can be given in this appeal. Hence, considering all the aspects in the case, it is found proper that the sentence of imprisonment awarded in the impugned judgment to the appellant in each case, is required to be modified.

10. Consequently, this appeal is partly allowed. The sentence of conviction standing against both the appellants is confirmed, the sentence of imprisonment of RI for 5 years to each of the appellant is hereby interfered with and modified to the period of sentence already undergone by them i.e. 4 years and 2 months.
11. The sentence of fine is also confirmed if the fine amount is not paid by the appellants then they will require to further undergo the sentence in view of fine as awarded by the trial Court.

Sd/-

(Rajendra Chandra Singh Samant)
Judge