

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.82 of 2002

Balram Kumar Sahu, S/o Chinta Ram Sahu, aged 32 years, R/o Banspaipara, Near Durga Chowk, Rajnandgaon, District Rajnandgaon

---- Appellant

versus

State of Chhattisgarh through Police Station Kanker

--- Respondent

For Appellant	:	Ms. Nirupama Bajpai , Advocate
For State/Respondent	:	Ms. Smita Ghai, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

21.11.2017

1. This appeal has been preferred against the judgment dated 5.11.2001 passed in Special Case No.65 of 2000 by the Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (henceforth 'the Act of 1985'), Bastar at Jagdalpur convicting and sentencing the accused/Appellant as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 20(b)(i) of the Act of 1985	Rigorous Imprisonment for 1 year and 6 months and fine of Rs.2,000/- with default stipulation

2. Brief facts of the case are that on 15.12.2000 at about 9:40 a.m., Sub-Inspector Ratnesh Singh Tomar (PW5) received information that 3-4 persons have kept Ganja in their possession and are present in Kanker Bus Stand. He recorded the information vide Ex.P1 and forwarded the information to the S.D.O. (P) vide Ex.P2. He along with Assistant Sub-Inspector Vidyanand, Head Constable Rai Singh, Constable Pawan, independent witnesses Mohd. Faiyaz

(PW1) and Sheikh Masook (PW2) and the informant went to the spot. They found the Appellant at the spot. The Appellant was served with a notice (Ex.P12) under Section 50 of the Act of 1985. The Appellant consented for his search to be made by Sub-Inspector Ratnesh Singh Tomar (PW5) himself. Ratnesh Singh Tomar and the other members of the search party gave their search vide Ex.P4 in which no objectionable article was found in their possession. Thereafter, pocket of the Appellant was searched, but nothing was found therein. A bag (*Thaila*) was kept by the Appellant with him. In search of the said bag, Ganja was found. Search memo (Ex.P5) was prepared. Identification of the recovered article was done vide Ex.P6. On weighing of the Ganja recovered from the Appellant, it was found to be 2.500 Kgs. Weight Panchnama (Ex.P8) was prepared. Two sample packets each of 25 Grams were prepared and sealed vide Ex.P10. Sample packets and the remaining Ganja were seized vide Ex.P9. Sub-Inspector Ratnesh Singh Tomar came back to the police station and deposited the seized articles in the Malkhana. Acknowledgment thereof is Ex.P11. He forwarded the details of the complete proceedings drawn to the superior officer vide Ex.P14. First Information Report (Ex.P16) was registered. Sample packets were sent to the Forensic Science Laboratory for chemical examination vide Ex.P17. FSL Report is Ex.P19 in which the samples were found to be Ganja. On completion of the investigation, a charge-sheet was filed against the Appellant for offence punishable under Section 20(b) of the Act of 1985. Charge was framed against him under Section 20(b) of the Act of 1985.

3. To hold the Appellant guilty, the prosecution examined as many as

5 witnesses. Statement of the Appellant was also recoded under Section 313 of the Code of Criminal Procedure in which he denied the guilt. No defence witness has been examined on his behalf.

4. After trial, the Trial Court convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant argued that mandatory provisions of the Act of 1985 are not complied with. Dehati Nalishi was not prepared on the spot. Sample packets of the Ganja were not sealed on the spot. Independent witnesses have not supported the case of the prosecution. She further submitted that she does not want to press this appeal on merits and confines her argument to the sentence part only. She further submitted that out of the total jail sentence of 1 year and 6 months, the Appellant has already undergone about 1 year. He has no criminal antecedent. He is facing the *lis* since 2000. Therefore, his sentence may be reduced to the period already undergone by him.
6. On the contrary, Learned State Counsel opposed the prayer made by Learned Counsel for the Appellant and supported the impugned judgment.
7. Considering the above facts and circumstances of the case, I am of the opinion that the ends of justice would be met if, while upholding the conviction imposed upon the Appellant, the jail sentence awarded to him is reduced to the period already undergone by him and the sentence of fine is affirmed. Ordered accordingly.

8. Consequently, the appeal is allowed in part to the extent indicated above.
9. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge