

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1214 of 2016**

- Deendayal Chandra, S/o Lakeshwar Chandra, aged about – 23 years, R/o Village – Arsiya, Police Station Jaijaipur, District – Janjgir-Champa (C.G.)

---- Appellant**Versus**

- The State of Chhattisgarh, Through : Arakshi Kendra – Birra, District – Janjgir-Champa (C.G.)

---- Respondent

For Appellant	: Shri Satish Chandra Verma, Advocate
For Respondent/State	: Shri Suryakant Mishra, Panel Lawyer

Hon'ble Shri Justice Chandra Bhushan Bajpai
Judgment on Board

09-06-2017

1. Heard on I.A. No.1/2017 for urgent hearing and I.A. No.2/2017 for hearing during summer vacation.
2. On due consideration, both the interim applications are hereby disposed of.
3. Learned counsel for the appellant would submit that as the appellant is merely aged about 23 years with no criminal antecedent, he is ready to argue the matter finally, hence I.A. No.1/2016 may be disposed of as withdrawn and matter may be heard finally looking to the facts surfaced in the matter.
4. Learned State counsel would submit that he is ready to argue the matter finally.
5. With the consent of the parties, matter is heard finally.
6. Challenge in this appeal is to the judgment of conviction and order of sentence dated 09.09.2016, passed by the Special Judge under the

Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act'), Janjgir, District – Janjgir-Champa Chhattisgarh, in Special Criminal Case No.06/2014, whereby and where-under the learned Special Judge after holding the accused/appellant guilty for illegal possession of 8 Kg and 500 gms of Ganja, convicted him under Section 20(b)(ii)(B) of the NDPS Act and sentenced him to undergo R.I. for five years and also to pay fine of Rs.10,000/-, in default of payment of fine to further undergo additional R.I. for six months.

7. 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.
8. As per the case of the prosecution, on 09.03.2014, at about 3.00 pm, Mr. J.S. Rajput (PW-6) has received an information from the informant that one person in a red colour Pulsar motorcycle heading towards Birra along with Ganja. The Investigating Officer along with *Panch* witnesses reached to the spot, after due recording the said information and following other proceedings. The appellant was travelling in a motorcycle, he was stopped by the Investigating Officer and after providing him his official identification gave him notice as required under the law for the search of the appellant that if he wishes the search may be conducted in presence of Magistrate/Gazetted Officer or by the I.O. himself. The appellant consented to be searched by the I.O. himself. Thereafter, he was duly searched and from his possession 8 kg 500 gms Ganja were recovered which was duly identified in the physical examination. After completion of entire proceedings as required under the law, the appellant was arrested. FIR (Ex.P-29) was registered and the said motorcycle and Ganja along with sample packets, duly seized and sealed, were kept in the Malkhana of the Police Station, Birra.

Subsequently, the samples were sent for chemical examination to FSL, Raipur. The FSL after examination confirmed the presence of *Ganja* in the said sample.

9. After completion of investigation, information was given to the superior official, charge sheet has been filed against the appellant before the Special Judge, NDPS Act, Janjgir. The trial Court framed the charges against the appellant and the appellant denied for the charges framed against him, prayed for trial.
10. In order to prove the guilt of the appellant, the prosecution examined as many as 9 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.
11. After affording opportunity of hearing to the parties, the trial Court has convicted and sentenced the appellant as above.
12. I have heard learned counsel for the parties, perused the judgment impugned and records of the Court below.
13. Learned counsel for the appellant would submit that as per instructions received from the appellant, he is not assailing the instant Criminal Appeal on its merits, he is assailing the instant Criminal Appeal only for the quantum of sentence as the appellant was aged about 23 years at the time of incident, he is the first offender. There was no any earlier criminal antecedent of the appellant. He had served the sentence during trial since 09.03.2014 till 28.03.2014 and thereafter, since 09.09.2016 till date. With this, the appellant had served the sentence till date of about 9 months and 19 days. He will not commit any offence in future. He may be sentenced sympathetically looking to his age and no criminal past.
14. 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. 8 Kg. 500 gms 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.

15. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution.
16. 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 9 months and 19 days till date and only 8 Kg and 500 gms of Ganja has been recovered from him. The appellant has prayed for an opportunity to remain in the society without involvement in any crime in future and also the appellant is not assailing the instant Criminal Appeal on the basis of its merits regarding conviction awarded by the trial Court also been perusal of the entire matter and evidence adduced by the parties, other facts and circumstances, I do not find, I do not find any illegality or impropriety in the judgment of conviction and imposition of fine sentence passed against the appellant. This Court is of the opinion that there is no scope for interference with the conviction of the appellant and the conviction and fine awarded is liable to be affirmed.
17. So far as quantum of jail sentence is concerned, the appellant is aged about 23 years, he had served the sentence for 9 months and 19 days. Looking to his aged and the fact that he is first offender, I am of view that the substantive jail sentence be reduced so that the appellant shall live peacefully in the society without committing any crime in future.

Consequently, this Court is of the view that the quantum of substantive jail sentence requires to be reduced.

18. In this given matter, the sentence of R.I. for 1 year and 6 months instead of R.I. for 5 years would be proper and appropriate. 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 are hereby affirmed. However, the jail sentence awarded to the appellant is modified/reduced and instead R.I. for five years, the appellant is sentenced for 1 year and 6 months. The authorities concerned are directed to serve the remaining part of the sentence after set off with the part of the sentence served so far and realization of fine amount so directed by the trial Court and after serving of reduced substantive jail sentence for 1 year and 6 months, the appellant be released, if he is not required in connection with any other criminal matter. If the appellant fails to deposit the fine amount as directed, the authorities concerned are directed to serve the appellant with the default sentence in compliance of para 34 of the impugned order.
19. Copy of the judgment may be submitted by the appellant before the trial Court for compliance, as directed.
20. Registrar (Judicial) is also directed to transmit the copy of the judgment immediately for compliance.
21. In view of the above, the appeal is partly allowed.

Sd/-
(Chandra Bhushan Bajpai)
Vacation Judge