

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1429 of 2016**

Parmeshwar Singh Kanwar S/o Umend Singh Kanwar Aged
About 35 Years R/o Qt. No. 27 Ward No. 2 Khaalpara Rode,
Police Chauki - Korbi, Police Station - Pasan, District - Korba
Chhattisgarh

---- Appellant**Versus**

State Of Chhattisgarh Through Police Chauki - Korbi, Police
Station - Pasan, District - Korba Chhattisgarh

---- Respondent

For appellant	:	Mr. Vikas Pandey, Adv.
For Respondent/State	:	Mrs. M. Asha, PL

ORAL JUDGMENT**23/1/2017**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 8-11-2016 passed by the Special Judge (N.D.P.S.) Korba (CG) in Special (NDPS) Case no. 2/2015 whereby and whereunder learned trial Court after holding the accused appellant guilty for being in illicit possession of 4 kg of Ganja, convicted him under Section 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in brevity 'NDPS Act') and sentenced to undergo RI for 5 years and to pay a fine of Rs. 10,000/-, in default of payment of fine to further undergo additional RI for one year.
2. Conviction is impugned on the ground that without there being an iota of evidence, learned Court below has convicted and sentenced the appellant as aforementioned and thereby committed illegality.
3. As per the case of the prosecution, on 23-1-2015 at about 10.30 am, Asstt. P.W. 10 Jitendra Singh Yadav, Sub Inspector of the Out Post Korbi, P.S. Pasan received information from the informant that the accused/appellant has kept illicit Ganja in his house for sale. He recorded the information and thereafter requisitioned the

Panch witnesses. After informing them regarding the information, left for the house of the accused/appellant along with investigation kit and Pancha witnesses. When he reached to the house of the accused/appellant, he gave his identification and served the accused with the notice under Section 50 of the NDPS Act that he may be searched before any gazetted officer or Magistrate or if he wish search may be conducted by the IO himself. The appellant agreed to be searched by the said Police Officer. He gave his consent and thereafter after taking search of the house, he noticed some objectionable substance inside the house. Same was found as Ganja on physical examination. That was 4 kg. He took the sample and seized the same and the remaining Ganja. He also prepared spot map and lodged the FIR Ex. P-18. The seized Ganja and the samples were kept in safe custody and during investigation the samples were sent for chemical analysis which were confirmed as Ganja. The FIR was also recorded. After completion of investigation, charge sheet was filed before the trial Court on 20-2-2015. During trial, the appellant was charged for the offence under Section 20(b)(ii)(B) of the NDPS Act.

4. So as to hold the accused guilty, prosecution has examined 10 witnesses in all. Statement of the accused was recorded under Section 313 of the Cr.P.C. wherein he denied the circumstances appearing against him, pleaded innocence and false implication in the crime in question.
5. After affording opportunity of hearing to the parties, the trial court by the judgment impugned has convicted and sentenced the accused/appellant as aforementioned. Hence present appeal.
6. I have heard learned counsel for the parties and perused the record of the trial Court.
7. Learned counsel for the appellant submits that he is not assailing conviction awarded to the appellant instead he is assailing the instant criminal appeal only on the point of sentence awarded by the Court below. The accused/appellant was first offender, he is in custody since 23-1-2015, with this he has already remained about 2 years in confinement. For the offence under Section 20(b)(ii)(B) of the NDPS Act, there is no minimum sentence prescribed and he will not commit the same offence in future. Hence he may be

considered sympathetically. He further submits that the appellant is a local resident of Out Post Korbi, P.S. Pasan. He be given an opportunity to live in the society without committing crime. He further submits that the appellant is ready to deposit fine amount. Hence he may be appropriately sentenced for the offence committed as the quantum of Ganja was 4 kg only.

8. Per contra, learned counsel for the respondent/State opposes the arguments advanced on behalf of the appellant and submits that looking to the quantity of Ganja seized from the house of the accused and as he was a mature person aged about 35 years at the time of incident, the trial Court has rightly sentenced the accused/appellant. Hence the appeal may be dismissed on both counts.
9. In order to appreciate the arguments advanced by the respective parties, I have perused the evidence adduced by the parties.
10. Learned counsel for the appellant is not assailing instant criminal appeal on its merit regarding conviction and also after perusal of the evidence adduced by the prosecution, in the considered view of this Court, the trial Court has not committed any error or illegality in convicting the accused/appellant. Hence conviction awarded to the accused/appellant requires no interference.
11. So far as fine sentence awarded to the appellant is concerned, considering the quantity of Ganja seized and looking to other facts i.e. age of the accused, in the opinion of this Court, the fine amount cannot be held as excessive. Consequently, the fine amount awarded to the accused/appellant is also hereby affirmed.
12. So far as substantive jail sentence for the offence is concerned, the trial Court sentenced RI for 5 years. Looking to the entire facts and circumstances especially the quantum of the Ganja seized and as there is no minimum sentence prescribed for the offence, further as the accused was first offender and he is praying for consideration of his case so that he will remain in the society and earn his livelihood without committing any likewise crime, he is in jail since 2 years, in the considered view of this Court, the period already undergone by him would serve the ends of justice.
13. Consequently, the appeal is allowed in part. Conviction of the appellant is hereby affirmed. Fine sentence awarded by the trial

Court is also affirmed. As regards the substantive jail sentence, instead of RI for 5 years, the accused/appellant is sentenced to RI for 2 years. He is presently in jail. He be released forthwith after realization of the fine amount if not required in any other case. If the fine amount is not deposited, he shall serve the sentence for default of payment of fine as ordered by the trial Court in para 19 of the impugned judgment.

14. Appeal allowed in part.

Sd/-
(Chandra Bhushan Bajpai)
Judge