

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.108 of 2003
(Against the judgment of conviction and order of sentence dated
24.12.2002 passed by Shri Anil Kumar Verma, District and Sessions
Judge-cum- Special Judge, NDPS, Act in NDPS Case No. 1 of 2001.)

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Harbans Nonia, son of Lal Mohan Nonia, resident of village-Sareola, P.S.-Rajpur,
District-Buxar.

.... Appellant/s

Versus

1. State of Bihar
2. The Union of India

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Om Prakash Upadhyay, Advocate
For the State : Mr. Abhay Kumar, APP.

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 20-01-2018

Heard learned counsel for the appellant and the counsel
appearing on behalf of the State.

2. The appellant has filed the present appeal against the conviction and order of sentence dated 24.12.2002 passed by Special Judge-cum-Sessions Judge, Buxar in NDPS Case No. 01 of 2001 for the offence under section 21(b) of the NDPS Act and the appellant was directed to undergo sentence of R.I. for four years and a fine of Rs. 10,000/- and in default of payment of fine RI for further period of one year.

3. The prosecution story in brief is that on 1.1.2001 first informant S.I. Manoranjan Bharti, Officer-in-charge Rajpur P.S. alongwith other police officials after doing raised at village Serenja



were going to Sonapa and at about 8 A.M. he received confidential information that notorious dacoit Harbans Nonia of village Sarenja who was wanted in Itarhi P.S. 45/971 under section 395 I.P.C. was to catch bus from Sarenja bus stand, that after getting the information, the first informant along with other officers and police constables proceeded towards the bus stand Sarenja and surrounded the areas due to which Harband Nonia boarded a bus, but when he started checking the bus, accused came down from the bus and tried to flee away, but the police force which was alert apprehended him and on interrogation he admitted that he was Harbans Nonia, that after arresting him the police party were to proceed to police station when accused expressed desire to urinate but for about one minute, he just pretended to urine due to which the police force became suspicious that he may be possessed some fire arms etc. then the police force thought it fit to search his person and first informant allegedly asked him to accompany to Magistrate, but he declined and requested the first informant to take his search. It is alleged that then first informant called two local witnesses of village Sarenja and in presence of both the witnesses accused Harbans Nonia was searched and from the right pocket of his fulpant, a small brass balance alongwith a bad of polythene in which some powdery substance was found were recovered and accused disclosed that the power in the polythene was



Heroin. He also allegedly said that by weighing with the balance, he used to sale Heroin. It is alleged that then accused was asked by police that whether he would like to give his search before a Magistrate but he declined that the recovered Heroin alongwith polythene was got weighed by a local goldsmith which was found to be 10 (ten) grams in weight and a small quantity of power was taen out and sample was prepared in puria and after keeping the same in polythene it was sealed in tin container and the sample as well as the remaining exhibit were sealed and after sealing the same witnesses also signed over that and accused gave his L.T.I., seizure list was also prepared and witnesses voluntarily signed over them and one copy of seizure lists was also given to accused Harband Nonia who gave his L.T.I. as proof. On the basis of self statement of Manoranjan Bharti, Officer-in-charge, Bajpur Police Station, Barjpur P.S. Case No. 1 of 2001 was registered and S.I. Krishnadeo Singh was entrusted with the investigation of the case.

3. The police after investigation submitted charge-sheet against the appellant. On framing of charge the appellant pleaded not guilty and claimed to be tried.

4. On behalf of the prosecution, 7 witnesses were examined in support of prosecution case.

P.Ws. 4 and 5 are the seizure list witnesses. P.W.-1 is the



informant of the case. P.W.-2 Arjun Purti, member of the raiding party. P.W.-3 is the FSL expert. P.W.7 is S.I. of the police who proved reminder of sample of FSL and P.W.-6 is I.O. of the case.

5. Mr. Om Prakash Upadhyaya, learned counsel appearing on behalf of the appellant submits that the trial court has committed error in convicting the appellant. The appreciation of the evidence by the trial court is not in accordance with the settled principle of fair trial. He submits that in the present case there is violation of many statutory and mandatory provisions of the NDPS Act (hereinafter referred to as the 'Act'). He submits that trial court has not considered the violation of mandatory provision of Section 50 of the Act. He next submitted that in the present case there is inordinate delay in sending the sample for FSL report and as such no reliance can be placed of such FSL report. He next contended that in the present case contraband was allegedly weighed by the goldsmith but prosecution has not examined the goldsmith who has measured the weight of contraband. He lastly submitted in the present case the appellant was convicted for offence under section 21(B) of the Act and awarded sentence of four years imprisonment and a fine of Rs. 10,000/-. Out of which he has already served sentence of 2 years and four months and as such considering the totality of the facts and circumstances of the case and the fact that the appeal has remained



pending for 15 years, this court should consider the desirability of reducing the sentence as period undergone. He submitted that the appellant has no criminal antecedent and the trial court has not considered that prior to the instant case the appellant was not involved in any criminal activities.

6. Learned counsel appearing on behalf of the State submits that the appellant was found guilty of carrying contraband (heroin) and as such the appellant does not deserve any leniency in the matter of sentence.

7. I have examined the record and also considered the discussion of the trial court in the present case. From the discussion of the trial court, it is manifest that the trial court has not examined the effect for non-examination of the material witnesses including the goldsmith who alleged to have weighed the contraband and as such the appellant has suffered prejudice in the present case and the appellant was convicted and sentenced for carrying contraband of more than small quantity.

8. Considering the totality of the facts situation that when there is no conclusive evidence to indicate the authenticity of the weight of the contraband measured by the goldsmith and absence of examination and cross-examination of the said goldsmith in the present case it is not safe to accept the prosecution version about the



offence committed by the appellant that he was carrying contraband beyond the small quantity. Since the appellant has remained in jail for two years and four months and there are certain infraction of the statutory provisions of the Act for conducting fair trial, the court is of the view that in the totality of facts situation ends of justice requires that while upholding the conviction of the appellant, the period of sentence of the appellant be reduced to the period already undergone.

9. Accordingly, the order of conviction of the trial court is approved but in the peculiar facts and circumstances of the case, the sentence is reduced to the period already undergone.

10. With the aforesaid modification in the order of the trial court, the appeal is partly allowed and disposed of.

11. Since the appellant is on bail he is discharged from the liability of the bail bond.

(Anil Kumar Upadhyay, J)

Ravi/-

AFR/NAFR	NAFR
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