

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 137 of 2010

Shanker Sarkar, son of Makhan Sarkar, aged about 22 years,
resident of M.V.104, Malkangiri, P.S. Malkangiri (Orissa) ---
Appellant

Versus

State of Chhattisgarh through the police station, Nagarnar,
Distt. Bastar, Jagdalpur, Chhattisgarh --- **Respondent**

For the appellant	:	Ms. Sofia Khan, Advocate.
For the Respondent	:	Mr. Sanjeev Pandey, Govt. Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

21.07.2018

1. The present appeal is against the judgment dated 30.10.2009 passed by the Special Judge, NDPS Act, Jagdalpur in NDPS Special Trial No.83/2007 whereby the appellant has been convicted u/s 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and sentenced to undergo R.I. for 3 years and to pay a fine of Rs.5000/-, in default of payment of fine, to further undergo R.I., for six months.
2. As per the prosecution case, on 21.11.2007 the Sub-Inspector of Police Station Nagarnar received certain information that two persons who were holding the contraband cannabis in the suit case were waiting for a Bus at Nagarnar Chowk. Having received the said information it was recorded in the *Rosnamcha Sanha No.19* and the information was sent to the higher officers by phone and the witnesses were summoned which was mentioned in dispatch

Sanha vide Ex.P.17-C. The Panchnama Ex.P-17 was prepared about receipt of information of crime. Thereafter at about 20.45, the proforma was prepared vide Ex.P-19 to the effect that due to paucity of time, search warrant could not be obtained. On the same day, at about 21.55 hrs., along-with the witnesses, they proceeded for the raid which was also recorded in the Rosnamcha Sanha. Having reached to the spot two persons were found holding the suit case, out of them one person was the appellant and thereafter they were served with the notice u/s 91 of Cr.P.C., but no valid document for transport of the said cannabis could be produced. Subsequently, a notice was served u/s 50 of the NDPS Act and search of the appellant was made. The appellants were also given opportunity to search the Police Staff, their witnesses and the Jeep and no sort of objectionable goods was found. Thereafter, the suit case which was held by the appellant was searched wherein the police found the cannabis like substance. Subsequently the Panchnama was prepared. On primary inspection it was found to be cannabis and it was weighed and the weight of the cannabis was found to be 5 Kgs., Thereafter, the samples were taken out and sealed and seizure was made in respect of the entire cannabis and the appellant was arrested and subsequently FIR was registered. After the incident, the information was sent to the higher officials and the sealed samples were sent to FSL. After testing the samples in FSL, it was found that the samples were cannabis. The charge sheet was filed before the Court below.

3. During the course of trial, the appellant abjured the guilt and

claimed to be tried. In order to prove the guilt of accused, the prosecution had examined as many as 6 witnesses. The trial Court after evaluating the entire evidence, convicted and sentenced the accused as aforesaid. Hence this appeal.

4. Learned counsel for the applicant submits that the prosecution has failed to comply with the mandatory provisions of Section 42, 50, 52 & 55 of the NDPS Act. It is contended that the cannabis was not seized in person from the present applicant, therefore, the ownership and the conscious possession cannot be attributed to the present applicant. It is further contended that the independent witnesses namely Ramesh Mishra (P.W.4) has not supported the case of prosecution as such the impugned judgment of conviction cannot be sustained and it requires interference of this Court.
5. Per contra, learned State Counsel supported the case of prosecution and submits that the judgment of conviction and order of sentence is well merited which do not call for any interference.
6. Perused the records of the court below. According to the I.O., P.W.5 Yakub Meman, he was posted in the police station Nagarnar on 21.11.2007 wherein he received an information that two persons were standing with cannabis at the square and were waiting for the bus which was recorded in the Rosnamcha Sanha vide Ex.P.16(C). A perusal of Ex.P-16(C) affirms the the same that certain information like nature was recorded in the Rosnamcha Sanha and further the witnesses were summoned which was also recorded in the Rosnamcha Sanha vide Ex.P-17(c). Thereafter the format was prepared

that the warrant could not be obtained due to paucity of time vide Ex.P-19. A perusal of Ex. P.19 would show that the information was sent to the effect that the warrant could not be obtained for paucity of time and the delay in time to obtain permission may entail the accused to flee away. A perusal of Ex.P.19 confirms the same that the information was sent to higher officials which bears the signature and the seal on the margin of it. The information which was sent was also recorded in the Rosnamcha Sanha by Ex.P-22. Ex.P.22 the copy of the same also confirms the same. Further the statement would show that the Investigating Officer went along-with the staff in Jeep No.C.G.03/1588 which was also recorded in the Rosnamcha Sanha vide Ex.P-23(C). Thereafter when they reached to the spot the accused appellant was found holding a suit case in his hand. He was served with notice u/s 91 of Cr.P.C., vide Ex.P-24.

7. A perusal of Ex.P-24 would show that the notice was given to the accused which bears the endorsement of the accused and stated that he do not have any paper/document to hold the goods in possession. The record would show that they were further served with a notice u/s 50 of the NDPS Act that he was ready to be examined himself by any Magistrate which is proved by Ex.P-1. A perusal of Ex.P-1 shows that it bears the endorsement that the accused agreed to get himself examined from the police officers. Subsequently the police officers and the staff were examined vide Talasi Panchnama by the accused and nothing incriminating goods were found with them which was recorded in the Panchnama Ex.P.2 and thereafter the search was made. On being

searched from the suit case, a packet wrapped in a news paper was found and it was prima facie found to be cannabis which was recorded in Ex.P-3. Subsequently the seizure Panchnama was recorded vide Ex.P-4. On the primary inspection it was found to be cannabis which was also recorded vide Ex.P-5. A perusal of the Ex.P-5 also shows and affirm the same fact. Thereafter, the weighment scale was called, for which, a Panchnama was prepared vide Ex.P-6 and after the seized goods was weighed, the weight of the same was found to be 5 kgs. The said fact is supported by the P.W.3 Shailendra Kumar and P.W.1 Prabhulal Sahu who weighed it. Thereafter two packets each containing 25 grams of Ganja were prepared which was marked as A-1 and A-2, for which, the Panchnama was prepared vide Ex.P-9 and was kept in sealed cover and the seal was also put on the packet. Ex.P.10 also confirms the fact that on the portion of 'D' to 'D', seal was also marked. Thereafter, the remaining cannabis of 4 Kgs., and 950 grams was marked as Article 'A' and the entire goods were seized vide Ex.P-11. Thereafter the *Rosnamcha Sanha* was prepared. It was further recorded in the *Rosnamcha Sanha* vide Ex.P-25-C and crime was registered bearing No.224/2009 vide Ex.P-26. The entire information of the investigation and the procedure was sent to the City Superintendent of Police vide Ex.P-28 in compliance with section 27 of the NDPS Act and with the letter dated 23.11.2007, the sample packet A-1 was sent to FSL, Raipur vide Ex.P-29. Ex.P-30 affirms the fact that the sample was received by the FSL on 26.11.2007. Further Ex.P-31 affirms the fact which is a report received from the

FSL that the said sample which was sent were cannabis.

8. Therefore, taking into the evidence which is on record, the prosecution was able to prove the fact beyond doubt that the while the appellant was waiting for a bus at the bus-stand i.e., Nagarnar Chowk, from his possession 5 Kgs., of cannabis was seized. The statement and documents do not show that there was any breach of conditions of section 42, 50 or 57 of the NDPS Act. The samples which were sent to FSL and after testing the same, the report was submitted which confirms the fact that it was cannabis. There is also no plausible explanation on record that the seized cannabis did not belong to the appellant and the appellant was falsely implicated. Taking into the facts as also the documents and evidence which are placed on record, in the opinion of this court, no fault can be attributed to the judgment of conviction. Therefore, under the circumstances, the conviction made by the court below u/s 20(b)(ii)(B) of the NDPS cannot be said to be unstained.
9. Now coming to the sentence, it is stated that out of 3 years imprisonment, the appellant has already suffered the jail sentence of 2 years and 6 months as he was arrested on 22.11.2007 vide Ex.P-12 and was released on bail on 13.05.2010. Taking into consideration the fact that the incident took place in the year 2007 and by now the appellant has suffered jail sentence of two-and-half years, I am of the opinion that the interest of justice will be subserved if the sentence is held as undergone. Accordingly, the period of jail sentence suffered by the appellant is held as undergone. However, the fine amount of Rs.5000/-,

which has been imposed by the trial Court is maintained. In absence of payment of fine, the appellant shall further undergo the jail sentence of six months.

10. With the above direction/observation, this appeal is partly allowed.

**Sd/-
GOUTAM BHADURI
JUDGE**