

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.967 OF 2013

Yashwant Vithal Patil Alias Yesha
Adult, Residing at Kurla Takiya
Ward Chawl, Room No. 1,
Kurla (West), Mumbai – 400 070
(At present lodged in Kolhapur
Central Prison)

.... Appellant
(Ori. Accused)

Vs.

The State of Maharashtra
Anti Narcotic Cell, Azad Maidan
Police Station, Mumbai

.... Respondent/
Ori. Complainant

Ms. Beerta H. Bajwa i/by Lalla and Lalla for the Appellant.
Mr. Y.Y. Dabke, APP for the State.

Coram : **Smt. Sadhana S. Jadhav, J.**
Date : 26th October 2018

JUDGMENT :

1 The appellant herein is convicted for the offences punishable under Sections 8(c) read with 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (“NDPS Act” for short) and sentenced to suffer rigorous imprisonment for three

years. He is further sentenced to pay a fine of Rs.5,000/- and in default of payment of fine, simple imprisonment for three months by the Special Judge, Under NDPS Act, Greater Bombay in NDPS Special Case No.121 of 2009 vide judgment and order dated 12th July 2013.

2 Being aggrieved by the said judgment, the appellant herein has filed the present appeal, through Jail.

3 Such of the facts necessary for the decision of this appeal are as follows :

On 25th May 1990, PW-2, Ramdas Sakharam Sawant was officiating as an ASI at Azad Maidan Unit of Anti Narcotic Cell. He was informed by P.I., Jadhav that PSI, Sampat Mane has received a secret information that Yashwant Patil deals in Charas contraband and on that day, he is likely to visit opposite Ramnath Chhaya Building at Chunabhatti, Mumbai for selling Charas. The law was set into motion and the Police staff i.e. Police Constable, Sonawane had summoned two persons to act as panchas. They had formed a

raiding party and had initially approached Nehru Nagar Police Station as Chunabhatti falls within the jurisdiction of Nehru Nagar Police Station. At about 2.40 pm, the accused had arrived at the spot. He was carrying a black bag in his hand. He was waiting for somebody. The raiding party surrounded the accused. The accused was, orally as well as in writing, apprised of search, seizure and arrest as contemplated under Section 50 of NDPS Act. The accused had consented for search by the Police. Upon opening the black plastic bag, police found four balls in different shapes. The balls had strong odour. The ingredients of the ball were tested on the field testing kit and it was found to be Charas. Upon weighing, total weight was 800 gms. Samples were drawn.

PW-2 has proved the contents of the F.I.R. and the same is marked at Exhibit 19. PW-2 has been cross-examined at length, but no dent could be created in his examination-in-chief. On the basis of the report of PW-2, Crime number 262 of 2009 was registered at Anti Narcotic Cell for the offences punishable under Sections 8(c) read with 20 and 29 of NDPS Act.

4 PW-3, Dinkar Shankar Desai was attached to Store ANC at Azad Maidan, Mumbai as Police Naik. His evidence is to the extent that the contraband was deposited and then it was given to carrier for sending the same to F.S.L., Kalina.

5 PW-4- Sarika Shankar Awari was working as an Assistant Chemical Analyser in F.S.L., Kalina and she has proved that samples received by her in Crime no. 262 of 2009 were tested as per the procedure and were found to be contraband- Charas. It is elicited in the cross-examination that before she started analysing the sample, she knew that it was Charas, however, the said admission would not be fatal to the prosecution.

6 PW-5, Bhanudas Annasaheb Jadhav was attached to Azad Maidan Unit of Anti Narcotic Cell as Police Inspector. He has deposed before the Court about the steps taken by him in the course of investigation. There is compliance of the mandatory, as well as the statutory provisions of the NDPS Act, 1985. In the cross-

examination, he has stated that he does not remember as to whether on the day of occurrence, he was the Unit Incharge. By efflux of time, it cannot be said that it would be fatal to the prosecution. It is elicited in the cross-examination that the body search of the accused was conducted with a view to ascertain as to whether he was carrying contraband on his person. The fact that during the body search, the accused was having original letter given to him under Section 50 of the NDPS Act was not mentioned in post-trap panchanama would not be fatal to the prosecution.

7 PW-6, Sampat Namdev Mane, PSI at Azad Maidan Unit of Anti Narcotic Cell is the person who received secret information. He noted the said information in the station diary and then informed P.I., Jadhav. He had personally informed ACP, DCP, Senior PI on telephone about the said information. He was directed by DCP to verify the information and take further action under the guidance of P.I., Jadhav. The same was noted in the station diary. PW-6 had complied with mandatory provisions under Sections 42 and 43 of NDPS Act. The prosecution has established the guilt of the accused

beyond reasonable doubt.

8 Learned APP submits that the appellant herein was granted bail during the pendency of the trial and that he has indulged into similar offence under the NDPS Act and presently is in custody and therefore, the appeal was taken up for hearing as there was a report that the accused is in custody.

9 Upon perusal of evidence, this Court is satisfied that the investigating agency had followed the mandate of the provisions under NDPS Act and that the accused has not been able to rebut the allegations or disprove that he was not in possession of the contraband or that he had not visited Ramnath Chhaya building at Chunabhatti for the purpose of selling the same. In view of this, there is no reason to interfere with the findings recorded by the learned Special Judge. Hence, the appeal stands dismissed.

(Smt. Sadhana S. Jadhav, J)