

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 591 of 2010**

Kailash Nishad S/o Rambhau Nishad, Aged about 22 years Occupation Driver
R/o Laxmipara, Jamul, District Durg (C.G.).

---- Appellant**Versus**

State of Chhattigarh Through Police Station Jamul, District Durg (C.G.).

---- Respondent

For Appellant	:	Mr. Arvind Kumar Dubey, Advocate
For Respondent	:	Ms. Seema Dixit, PL

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board**02/12/2019**

1. This appeal has been preferred against the judgment dated 06/08/2010 passed in Special Case No. 14/2008 by the Special Judge, (NDPS) Durg (C.G.), whereby the Appellant has been convicted under Section 20 (B) (ii) (b) of the NDPS Act and sentenced to undergo RI for 4 years and to pay fine of Rs. 5000/- with default stipulation.
2. Facts of the case are that on 04/07/2008 on the basis of secret information, Station House Officer of Police Station Jamul along with witnesses reached to the spot and searched the Appellant. On being searched total 9 Kg contraband (Ganja) was found, which the Appellant has kept in his house for selling. The Ganja was seized. After completion of other formalities, he returned to the Police Station and FIR has been lodged. The seized Ganja was deposited in

Malkhana and the sample packets were sent for FSL. The FSL report is positive. After completion of investigation, a charge-sheet has been filed. Trial Court framed the charges. As many as 8 prosecution witnesses have been examined. No defence witness has been examined. Statement of the Appellant under Section 313 of the Cr.P.C has been recorded, wherein he has pleaded his innocence and false implication in the matter.

3. After trial, the trial Court has convicted and sentenced the Appellant as mentioned in paragraph one of this judgment. Hence, this appeal.
4. Learned Counsel appearing for the Appellant submits that he does not want to press this appeal on merits and confines his argument to the sentence part only. He further submits that the Appellant has undergone about 2 years and one month out of total jail sentence of 4 years, he has no criminal antecedent, he is facing the *lis* since 2008, therefore, he prays that the jail sentence awarded to the Appellant may be reduced to the period already undergone by him.
5. Per contra, learned Counsel appearing for the State supported the impugned judgment and submits that the sentence awarded by the trial Court is just and proper and requires no interference.
6. I have heard learned Counsel appearing on behalf of the parties and perused the record minutely.
7. Considering the above facts and circumstances of the case, particularly considering that out of total jail sentence of 4 years, the Appellant has undergone about 2 years and 1 month, he is facing the *lis* since 2008 and there is no criminal antecedent against him, I am of

the view that the ends of justice would be met if, while upholding the conviction imposed upon the Appellant, the jail sentenced awarded to him is reduced to the period already undergone by him and the fine sentence imposed upon him under Section 20 (B)(ii)(b) of the NDPS Act is enhanced to Rs. 10,000/-. Ordered accordingly. The fine amount imposed today shall be payable within 1 month from the date of receipt of a copy of this order. In default of payment, the Appellant shall be liable to undergo RI for 1 month. If any amount towards fine has already been paid, the same shall be adjusted in the fine amount imposed/enhanced today.

8. Consequently, the appeal is partly allowed to the extent indicated above.
9. It is reported that the Appellant/accused is on bail. His bail bond is not discharged at this stage and the same shall remain operative for a further period of 6 months in view of the provisions contained in Section 437-A of Cr.P.C.
10. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge