

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 145 of 2011**

1. Sandeep S/o Suresh Agrawal, aged about 28 years R/o Village Gopalpur, Thana Pithoura, District Mahasamund (C.G.)
2. Rajesh S/o Panna Lal Agrawal, aged about 23 years R/o Village Bhithiyadih, Thana Pithoura, District Mahasamund (C.G.)

----Appellants**Versus**

State of Chhattisgarh through the District Magistrate, Raipur, Distt. Raipur (C.G.).

---- Respondent

For Appellants	:	Mr. Sunil Sahu, Advocate
For Respondent	:	Mrs. Smriti Shrivastava, PL

Hon'ble Shri Justice Arvind Singh Chandel**Judgment on Board****15/07/2019**

1. This appeal has been preferred under Section 374 (2) of Cr.P.C against the judgment dated 03/02/2011 passed in Special Criminal Case No. 23/2010 by the Special Judge, NDPS, Raipur (C.G.) convicting the Appellant under Section 20 (b)(ii)(b) of the Narcotic Drugs and psychotropic Substances Act, 1985 (henceforth 'the Act 1985') and sentenced them to undergo RI for 2 years with fine of Rs. 10,000/- with default stipulation.
2. As per prosecution story, on 28/06/2010 at about 16:05 O'clock, ASI Ravendra Singh (PW6) received a secret information from the informant that two persons were moving on a motor-cycle for selling contraband (Ganja). He recorded the said information and informed his higher officials and then reached the spot along with his staff. The Appellants

came on motor-cycle which was being driven by Rajesh. A notice of search under Section 50 of the Act was given to them for their search. On being search total 4 kg of Ganja was found in four packets which was seized from their possession. Two sample packets were prepared each containing 100 gm. The contraband (Ganja) was weighted vide Ex.P-9. After completing mandatory formalities, *Dehati Nalsi* was written on the spot. After returning to the police station, FIR has been lodged. Seized contraband was submitted in Malkhana and two packets of sample were sent to the Forensic Science Laboratory for its examination. The report of FSL is positive. To prove the guilt of the Appellants, as many as 7 witnesses have been examined. No defence witness has been examined. Statement of the Appellants under Section 313 of the Cr.P.C were recorded, wherein they have pleaded their innocence and false implication in the matter.

3. After trial, the trial Court has convicted and sentenced the Appellants as mentioned in paragraph one of this judgment. Hence, this appeal.
4. Learned Counsel appearing for the Appellants 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 Appellants have undergone about 8 months out of total jail sentence of 2 years, they are facing the *lis* since 2010 and there are no criminal antecedents of the Appellants, therefore, the jail sentence awarded to them may be reduced to the period already undergone by them.
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 2 years, the Appellants have undergone about 8 months, they are facing the *lis* since 2010 and there are no criminal antecedents against them, I am of the view that the ends of justice would be met if, while upholding the conviction imposed upon the Appellants, the jail sentenced awarded to them is reduced to the period already undergone by them and the fine sentence imposed under Section 20 (b) (ii) (b) of the NDPS Act is enhanced to Rs. 20,000/- against each of the Appellants. Ordered accordingly. The enhanced amount of fine shall be payable within 1 month from the date of receipt of a copy of this order. In default of payment, the Appellants shall be liable to undergo RI for 6 months. If any amount has already been deposited towards fine, the same shall be adjusted in the amount of fine imposed/enhanced today.
8. Consequently, the appeal is partly allowed to the extent indicated above.
9. It is reported that the Appellants/accused are on bail. Their bail bonds are 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