

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1140 of 2012**

Sheikh Habib, S/o Shri Sheikh Latif, aged about 35 years R/o Umarda Bazaar,
Near the Mosque, P.S. Kharzalard, District Vasim (Maharashtra)

----Appellant**Versus**

State of Chhattisgarh Through Station House Officer, Post Office Saraipali,
Police Station Saraipali, District Mahasamund (C.G.).

---- Respondent

For Appellant	:	Ms. Sareena Khan, Advocate
For Respondent	:	Mrs. Smriti Shrivastava, PL

Hon'ble Shri Justice Arvind Singh Chandel**Judgment on Board****04/07/2019**

1. This appeal has been preferred under Section 374 (2) of Cr.P.C against the judgment dated 11/11/2011 passed in Special Criminal Crime No. 01/2011 by the Special Judge (NDPS) Act, 1985, Mahasamund (C.G.) convicting the Appellant under Section 20 (b) (ii) (b) of the Narcotics Drug and Psychotropic Substances Act, 1985 and sentenced him to undergo RI for 3 years and to pay fine of Rs. 10,000/- with default stipulation.
2. As per prosecution story, on 28/01/2011 at about 1:00 pm, ASI Sewak Ram (PW1) received an information from the informant that one person is looking for some customers for sale of contraband Gaja, which was contained in the orange sky coloured bag at Bus Stand Saraipali. He registered this information in Rochnamcha Sanha. Witnesses were called and Mukhbir information panchanama was prepared. After

complying the mandatory provisions of the Act, ASI reached to the spot along with staff and independent witnesses. On bus stand, he found the Appellant. He was given a notice of search. The Appellant had given his written consent to the ASI. Thereafter, search was made by ASI. On being search, he found a plastic bag containing contraband (Ganja) which was seized from the possession of the Appellant. ASI prepared seizure memo. He weighted the contraband separately before the witnesses and found a total weight of contraband as 5.53 Kg. He prepared two sample packets each containing 25 grams. The packets were sealed before the witnesses. The Appellant has been arrested and evidence of witnesses have been recorded. Inquest has been prepared and thereafter, the Appellant was brought to the police station. FIR has been registered vide Ex.P-1. The sealed sample packets were handed over to Malkhana Moharri and thereafter the same were sent for FSL report.

3. After investigation, a charge-sheet was filed and charges were framed. To prove the guilt of the Appellant, as many as 7 prosecution witnesses have 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. No defence witness has been examined.
4. After trial, the trial Court has convicted and sentenced the Appellant as mentioned in paragraph one of this judgment. Hence, this appeal.
5. 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 out of total jail sentence of 3 years, the Appellant has undergone about 2 years and 8 months, there is no criminal antecedent of the Appellant, therefore, the jail sentence awarded to him may be reduced to the period already undergone by him.

6. 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.
7. I have heard learned Counsel appearing on behalf of the parties and perused the record minutely.
8. Considering the above facts and circumstances, particularly that out of total jail sentence of 3 years, the Appellant has undergone about 2 years and 8 months and there is no criminal antecedent of the Appellant, I am of the view that the ends of justice would be met if, while upholding the conviction imposed upon the Appellant, the jail sentence awarded to him is reduced to the period already undergone by him
9. Consequently, the appeal is partly allowed. The conviction imposed upon the Appellant under the aforementioned Section is upheld, however, the jail sentence awarded to him is reduced to the period already undergone by him. The fine sentences imposed upon him is affirmed. The Appellant is directed to pay fine sentence within 1 month from today. In default of payment, the Appellant shall be liable to undergo RI for 3 months.
10. It is reported that the Appellant 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 Section 437-A of the Cr.P.C.

11. 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

Rahul