

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.262 of 2019**

- State Of Chhattisgarh Through The Police Station Jarhgaon District Mungeli Chhattisgarh.

---- **Petitioner****Versus**

- Harun Masih S/o Raja Babu Masih Aged About 42 Years R/o Village Bhathari Police Station Jarhagaon, District Mungeli Chhattisgarh.

---- **Respondent**-----
For the Petitioner/State : Shri Afroj Khan, Panel LawyerFor the respondent : None
-----**Hon'ble Shri Justice Ram Prasanna Sharma****Judgment On Board****14.02.2019.**

1. Heard on IA No.01/2019 for condonation of delay in filing the petition.
2. On due consideration, the application is allowed and the delay of 82 days in filing the petition is hereby condoned.
3. Also heard on application for grant of leave to appeal under Section 378(3) of CrPC.
4. This petition is preferred against the judgment of acquittal dated 30.6.2018 passed by Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act, 1985', Mungeli (CG) in Special Criminal Case No.05/2017 wherein the said Court acquitted the respondent for the charges under Section 21 (b) of the NDPS Act, 1985.
5. The respondent was charge sheeted for possessing narcotic drugs Rexogesic injection 87 in number and Nitra 10

tablets 114 in number. As per the evidence of the prosecution the articles were seized from the kitchen garden of the respondent. There is no evidence to establish that the said kitchen garden is in the exclusive possession of the respondent. No revenue record was produced before the trial Court to prove that the respondent was in sole possession of the land in question, therefore, the trial Court opined that the kitchen garden from where the said articles were seized is not in possession of the respondent, therefore, seizure from possession of the respondent of the said articles is not established. It is stated by the investigating officer before the trial court that the seized articles were deposited in the Malkhana but from the register of the Malkhana it is not established that when the articles were withdrawn from the Malkhana for depositing the same in the Forensic Science Laboratory. Therefore, the trial Court opined that the articles which was seized in the present case were sent for examination is under cloud.

6. Finding of the trial Court is based on marshaling of the evidence adduced before it and after reassessing the entire evidence, this Court has no reason to record a contrary finding. It is not a case where the respondent should be called for full consideration of the matter.

7. Accordingly, the application for leave to appeal is rejected. Consequently, the CrMP stands dismissed.

Sd/-
(Ram Prasanna Sharma)
JUDGE