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

***CRIMINAL APPEAL NO.441 OF 2010***

Nasirali Sher Ali Khan,  
Indian National, Age:40 years,  
R/o. 10, Mithaiwala Building,  
2<sup>nd</sup> Floor, Mutton Street,  
Mumbai – 400 003.  
(At present undergoing sentence  
at Nashik Road Central Prison, Nashik)

...Appellant  
(Org. Accused No.2)

Versus

1. A.B.Kodnani,  
Intelligence Officer,  
Narcotics Control Bureau,  
Mumbai.

2. The State of Maharashtra

...Respondents

Mr.Ayaz Khan, for the Appellant.

Ms.P.P.Shinde, A.P.P. for the Respondent - State.

***CORAM : REVATI MOHITE DERE, J.***

***DATE : 25<sup>th</sup> MARCH, 2019***

**ORAL JUDGMENT :**

1. The Appellant vide Judgment and Order dated 19<sup>th</sup> May, 2010,  
passed by the learned Special Judge under Narcotic Drugs and Psychotropic

Substances Act, 1985 (hereinafter referred to as 'the NDPS Act') for Greater Mumbai, in NDPS Special Case No.215 of 2007, has been convicted and sentenced as under:-

- for the offence punishable under Section 8(c) read with Section 20(b) (ii)(c) of the NDPS Act, to suffer rigorous imprisonment for 10 years and to pay fine of Rs.1,00,000/- in default of payment of fine to suffer simple imprisonment for 1 year;
- for the offence punishable under Section 29 of the NDPS Act, to suffer rigorous imprisonment for 10 years and to pay fine of Rs.1,00,000/- in default of payment of fine to suffer simple imprisonment for 1 year.

Both the substantive sentences were directed to run concurrently.

2. At the outset, it may be noted that the appellant after his release on parole, absconded and is still not arrested. Mr.Ayaz Khan, learned counsel for the Appellant states that there is no impediment for the Court to proceed with the Appellant's Appeal, even though the Appellant is absconding. Hence, the Appeal is being proceeded with.

3. It is also pertinent to note, that in NDPS Special Case No.215

of 2007, two other co-accused i.e. Shakeel Habib Khan @ Papu Pager S/o Habibkhan (Original Accused No.3) and Jayram Harichandrai Wadhwa @Kara (Original Accused No.1) were also convicted by the trial Court alongwith the present Appellant. Since, both the co-accused i.e. Shakeel Habib Khan @ Papu Pager (Original Accused No.3) and Jayram Harichandrai Wadhwa @Kara (Original Accused No.1) were in custody, their Appeals were taken up for final disposal by this Court (Coram: A.M.Badar, J.). This Court after hearing the learned counsel for the parties vide Judgment dated 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> February, 2018 confirmed the sentence of 10 years awarded to both the said co-accused, however, reduced the default sentence, as the accused could not deposit the fine amount.

4. The prosecution case in brief is as follows:-

On 3<sup>rd</sup> July, 2007, PW1 - Chandrashekhar Iswar Kedare, Intelligence Officer of the Narcotics Control Bureau received secret information regarding criminal conspiracy relating to interstate transport of narcotic drugs as well as possession of narcotic drugs, by the Appellant and other co-accused. The said information was submitted to the Zonal Office and as directed by the Zonal Director, search authorization of the house as

well as vehicle came to be prepared. Surveillance was kept outside the second gate of Nutan Nagar Society, Bandra (West), Mumbai, after summoning panch witnesses PW10 – Sandeep Shankar Joil and PW11 – Rajesh Nandlal Motwani. It is the prosecution case that on 7<sup>th</sup> July, 2007, at about 22.30 hours, a four wheeler vehicle i.e. Tavera bearing registration No.MH-43N-4631 came in the premises of Nutan Nagar Society, Bandra (West), Mumbai; that Original Accused No.1 - Jayram Harichandrai Wadhwa @Kara came out of the society and approached the driver of that vehicle; that Original Accused No.3 - Shakeel Habib Khan @ Papu Pager and the present Appellant were present in the Tavera; that the officers and the raiding team encircled the vehicle, showed their identity and after conducting statutory formalities, recovered a zipper bag containing 20 kg of *hashish/charas* from the Appellant. According to the prosecution, the said narcotic drug was brought for selling it to Original Accused No.1 - Jayram Harichandrai Wadhwa @Kara. Accordingly, the officers of the Narcotics Control Bureau took Original Accused No.1 - Jayram Harichandrai Wadhwa @Kara, to his house, i.e. Flat bearing No.A-13, situated in Nutan Nagar Society, where Original Accused No.1 - Jayram Harichandrai Wadhwa @Kara produced 11 carry bags containing

*hashish/charas*. The said bags were taken out by Original Accused No.1 - Jayram Harichandrai Wadhwa @Kara from the cupboard of the bedroom of the aforesaid flat. The officers of the Narcotics Control Bureau took samples from the said contraband, which was seized; samples as well as contraband were duly packed, sealed and labelled. Search of the flat of Original Accused No.1 - Jayram Harichandrai Wadhwa @Kara was conducted as well as the personal search of the accused including the Appellant was conducted. The four wheeler vehicle was also searched during the raid.

During the course of investigation, the statement of Shakeel Habib Khan @ Papu Pager (Original Accused No.3) was recorded by PW4 – Sanjay Kumar Sinha, Intelligence Officer of Narcotics Control Bureau; the Statement of Jayram Harichandrai Wadhwa @Kara (Original Accused No.1) was recorded by PW5 - Shrikant Mahadev Fansekar, Intelligence Officer of the Narcotics Control Bureau; and the statement of the Appellant was recorded by PW12 - Sanjay Poojari. Thereafter, samples were sent to the Forensic Laboratory for chemical analysis through PW7 – Narayan Jogi Panigrahi. PW2 - Bijendra Kumar, was the Assistant Chemical Analyser, who conducted the analysis on the

samples. After completion of investigation, a complaint was lodged by PW3-Anil Kodnani, Intelligence Officer of the Narcotics Control Bureau, as against all the accused including the Appellant. Accordingly, the case was numbered as NDPS Special Case No.215 of 2007 after cognizance was taken of the aforesaid offences.

The learned Special Judge framed charge as against the Appellant as well as other co-accused, who pleaded not guilty and claimed to be tried.

The prosecutrix in support of his case examined 12 witnesses. PW1 - Chandrashekhar Iswar Kedare, the Intelligence Officer of the Narcotics Control Bureau, who received information about the conspiracy, transport and possession of the Narcotic Drugs; PW2 - Bijendra Kumar, Assistant Chemical Analyser, who produced the test reports at Exhibits 21 to 23; PW3-Anil Kodnani, Intelligence Officer of the Narcotics Control Bureau; PW4 – Sanjay Kumar Sinha; PW5 - Shrikant Mahadev Fansekar; PW6 - Variyambat Madhavan Jayaprakash; PW9 – Ashish Vasant Mangaonkar and PW12 - Sanjay Poojari, the Officers of the Narcotics Control Bureau, who were present during the search and seizure of the contraband. PW7 – Narayan Jogi Panigrahi, the carrier of the samples, who

delivered the samples to the Central Forensic Science Laboratory, Hyderabad; PW8 – Mujjafar Ahmed Sofy, who had given the Tavera on rent to the Appellant; PW10 – Sandeep Shankar Joil and PW11 – Rajesh Nandlal Motwani, both panch witnesses, who were present at the time of the raid, search and seizure. Both PW10 – Sandeep Shankar Joil and PW11 – Rajesh Nandlal Motwani, were declared hostile as they did not support the prosecution.

The defence of the Appellant and other co-accused was that of total denial.

The learned Special Judge under NDPS Act, for Greater Mumbai, after examining the evidence on record, passed the Judgment and Order dated 19<sup>th</sup> May, 2010, convicting and sentencing the Appellant and other co-accused, as mentioned in paragraph 1 of this Judgment.

The learned Special Judge concluded after considering the evidence on record that the prosecution had proved that all accused persons, including the appellant had entered into a criminal conspiracy to commit an offence punishable under the NDPS Act and that in execution of the ultimate goal of the conspiracy, the Appellant and Shakeel Habib Khan @ Papu Pager (Original Accused No.3) transported 20 kg of

*hashish/charas* interstate and were found in possession of the said contraband in the premises of Nutan Nagar Society, Bandra.

5. Mr. Ayaz Khan, learned counsel for the Appellant submitted that the Appellant has been falsely implicated in the said case and that there is no material on record to connect the Appellant with the alleged offences. With the assistance of Mr.Khan, the entire evidence was read and documents were seen.

6. It is not in dispute that the quantity that was seized i.e. 20 kg of *hashish/charas* was commercial quantity. The evidence of PW1 - Chandrashekhar Iswar Kedare, Intelligence Officer shows that on 7<sup>th</sup> July, 2007, he had received information about transport, possession and delivery of *hashish/charas* in substantial quantity by the accused persons, as well as the location/spot where it was to be brought i.e. at Nutan Nagar Society at Bandra. Accordingly, PW1 - Chandrashekhar Iswar Kedare, Intelligence Officer, transcribed the said information and submitted the same to the Zonal Director, who in turn directed him to prepare search authorization in the name of PW3-Anil Kodnani, Intelligence Officer. Accordingly, PW1 -

Chandrashekhhar Iswar Kedare, Intelligence Officer, proved the information at Exhibit 16 and search authorization, which is at Exhibit 17. There is nothing in the cross examination of PW1, to disbelieve his testimony or discredit him.

7. The evidence of PW3-Anil Kodnani, Intelligence Officer, shows that on 7<sup>th</sup> July 2007, PW1 - Chandrashekhhar Iswar Kedare, Intelligence Officer, had given him intelligence note and had informed him about the directions of the Zonal Director. PW3-Anil Kodnani, was supplied with search authorization, which was duly signed by the Zonal Director. On receipt of the search authorization, PW3-Anil Kodnani, called his fellow officers and apprised them about the information, so received, in order to enable them to take steps regarding search and seizure. The said fact is corroborated by PW5 - Shrikant Mahadev Fansekar, Intelligence Officer, and PW12 - Sanjay Poojari, Intelligence Officer. The evidence of PW3-Anil Kodnani, with respect to the search and seizure of the contraband i.e. *hashish/charas* from the accused persons is further corroborated by PW4 – Sanjay Kumar Sinha, PW5 - Shrikant Mahadev Fansekar, PW6 - Variyambat Madhavan Jayaprakash, PW9 –

Ashish Vasant Mangaonkar and PW12 - Sanjay Poojari. A perusal of their evidence shows that they were armed with a search kit and drug testing kit, when they reached the second gate of Nutan Nagar Society on 7<sup>th</sup> July 2007. It is also evident from the evidence of PW3-Anil Kodnani, and other witnesses that at about 10.30 p.m. of 7<sup>th</sup> July 2007, a Tavera four wheeler vehicle reached the second gate of Nutan Nagar Society and halted; and that the said vehicle was being driven by Original Accused No.3 - Shakeel Habib Khan @ Papu Pager and the present Appellant was a co-passenger. Within a short time, Original Accused No.1 - Jayram Harichandrai Wadhwa @Kara approached the Appellant and Original Accused No.3 - Shakeel Habib Khan @ Papu Pager, who were sitting in the said vehicle and thereafter all the officers/search team surrounded the vehicle. The Appellant is stated to have handed over a zipper bag containing 20 kg of *hashish/charas*. After handing over the said zipper bag, PW3-Anil Kodnani and his fellow officers as well as the accused persons went to the flat of Original Accused No.1 - Jayram Harichandrai Wadhwa @Kara. The contents of the zipper bag were handed over by the Appellant, which were tested by the officers by a field testing kit and the said substance was found to be *hashish/charas*. Thereafter, Original

Accused No.1 – Jayram Harichandrai Wadhwa @Kara produced 11 polythene carry bags from the cupboard in the flat. The said carry bags are also stated to have contained *hashish/charas*. The samples were accordingly drawn and other formalities were undertaken. The evidence of all the witnesses i.e. PW3-Anil Kodnani, PW4 – Sanjay Kumar Sinha, PW5 - Shrikant Mahadev Fansekar and PW6 - Variyambat Madhavan Jayaprakash, who are Intelligence Officers of the Narcotics Control Bureau, corroborates each other with respect to the search and seizure of the contraband. The said evidence as stated aforesaid is corroborated by the report of the Chemical Analyser i.e. PW2 - Bijendra Kumar. The carrier of the contraband i.e. PW7 – Narayan Jogi Panigrahi, who took the samples to Hyderabad has also been examined. The C.A. Report shows that the said samples were of Tetra Hydro Cannabinol i.e. *hashish/charas* (Exhibits 21 to 23A). The statements of all the accused were also recorded by the Officers under Section 67 of the NDPS Act.

8. The evidence on record clearly shows the seizure of contraband from the Appellant and two other co-accused. The accused persons were apprehended at the spot. The Appellant handed over a zipper bag containing

20 kg of *hashish/charas*. The evidence of the officers is cogent, reliable and there is nothing on record to discredit their testimony. The C.A. Report also shows that the contraband contained in the zipper bag was *hashish/charas*. The aforesaid material on record clearly shows the complicity of the Appellant in the aforesaid offences.

9. Hence, no interference is warranted in the impugned Judgment and Order, convicting and sentencing the appellant as aforesaid.

10. Accordingly, the Appeal is dismissed.

***REVATI MOHITE DERE, J.***