

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 447 of 2008**

- Shamsheer Khan, S/o Mansoor Khan, aged about 42 years, R/o. Village Ranka, P. S. Ranka, Jharkhand.

----Appellant**Versus**

- State of Chhattisgarh, Through P.S. Ambikapur, District- Sarguja (C.G.).

---- Respondent

For Appellant	: Shri Shrawan Agrawal, Advocate.
For Respondent/State	: Shri Rahul Jha, Govt. Advocate

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

19.10.2020

1. The appeal is heard through Video Conferencing.
2. This appeal arises out of the judgment of conviction and order of sentence dated 27.02.2008, passed by the Special Sessions Judge [Constituted under Narcotic Drugs and Psychotropic Substances Act, 1985], Sarguja at Ambikapur in Special Criminal Case No. 22/2007, convicting the accused/appellant for the offence punishable under Section 21 (b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "NDPS Act") and sentencing him to undergo rigorous imprisonment for two years with fine of

Rs.15,000/-, in default of payment of fine, to further undergo rigorous imprisonment of six months.

3. Case of the prosecution, in brief, is that on 22.05.2007, R. D. Pandey, Sub-Inspector, who was posted at Police Station Ambikapur at the relevant time, received secret information from the informant that the present appellant/accused is in possession of contraband article i.e. brown sugar near Bus-Stand. The said information was reduced in writing vide Exs. P/6-C and the said information was forwarded to the City Superintendent of Police, Ambikapur vide Ex. P/7C. The police party went to the spot, apprehended the accused, in presence of witnesses namely Om Prakash Shukla & Santosh Kumar Singh gave him notice (Ex.P-19) under Section 50 of the NDPS Act and made him aware of his legal rights, on which he consented to be searched by the police. Firstly the members of raiding party and the witnesses were searched by the appellant vide Exs. P/1 & P/2, respectively, on which no objectionable article was found in their possession. Thereafter, after obtaining the consent of the appellant vide Ex. P/19 itself, accused/appellant was searched by the police party and found contraband article like Brown Sugar in three transparent polythene from the exclusive possession of the appellant/accused vide Ex. P/20. Weight of the alleged brown sugar was 18 grams & 140 milligrams and the weight of the packets on which the brown sugar was kept was 1 gram & 400 milligrams. Subsequent to that, it was found that excluding the weight of packets, the weight of the

contraband was 18 grams & 140 milligrams vide P/15. One packet of 18 grams & 140 grams of the said brown sugar and another empty packets of polythene was prepared and the said packets were duly sealed and kept in Malkhana and specimen of seal was affixed on the seizure memo vide Exs. P/23 & P/24, respectively. After reaching police station, FIR (Ex-P/27) was registered against the appellant under Section 8 /21 of the NDPS Act.

4. After usual investigation, charge sheet was filed against the accused/appellant under Section 8 / 21 of the NDPS Act. The Special Judge framed charge against the accused/appellant under Sections 8(c) / 21 (b) of the Narcotic Drugs and Psychotropic Substances Act, 1985. Accused denied the charge levelled against him and prayed for trial.

5. So as to hold the accused/appellant guilty, the prosecution examined 08 witnesses namely- Manoj Upadhyaya (PW-1), Ramdas Ram (PW-2), Vijay Ravi (PW-3), Mukesh Soni (PW-4), Arun Dubey (PW-5), Sanjay Pandey (PW-6), Santosh Kumar Singh (PW-7) and R. D. Pandey (PW-8). Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. However, no defence witness has been examined on behalf of the accused/appellant.

6. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as

mentioned in paragraph 2 of this judgment.

7. Learned counsel for the appellant/accused submits that though he has raised various grounds in the memo of appeal, but he is not pressing all those grounds and is confining his argument only to the extent that in the instant case independent witnesses have not supported the prosecution case and conviction cannot rest only on the basis of statements of official witnesses. He further submits that the statutory compliance as required under the NDPS Act has not been made while making search and seizure of the alleged brown sugar. Alternatively, he submits that appellant was 42 years of age at the time of incident and now he is aged about 54 years and looking to the fact that incident occurred in the year 2007 i.e. near about 13 years lapsed and the appellant is reported to have remained in jail for about 1 year, 2 months and 13 days, it is prayed that the appellant may be sentenced to the period already undergone by him.

8. Learned counsel for the State, while supporting the impugned judgment, submits that there is no reason to disbelieve the evidence of Investigating Officer and other seizure witnesses. He also submits that all the mandatory provisions contained in Sections 42, 50, 52, 55 & 57 of the NDPS Act have been duly complied with by the investigating Officer while making search and seizure of alleged brown sugar. Notice under Section 50 of the NDPS Act was duly given to the appellant and, thereafter, personal search of the police party and the witnesses was also made by the

appellant and then consent was given by the appellant, and therefore, the appellant has rightly been convicted & sentenced by the Special Court as aforementioned, which does not call for any interference in the instant appeal.

9. I have heard learned counsel appearing for the parties and perused the material available on record.

10. As per the evidence of R. D. Pandey (PW08), Sub-Inspector, who was posted at Police Station Ambikapur at the relevant time, he received secret information that a person near Bus Stand, Ambikapur was having Brown Sugar in his possession unauthorizedly. The said information was reduced into writing vide Ex. P/7C and forwarded the same to the City Superintendent of Police, Ambikapur vide Ex. P-18 and recorded it Rojnamchasanha vide Ex.P-8C. The police party along with witnesses namely Om Prakash Shukla & Santosh Kumar Singh went to the spot, apprehended the accused, gave him notice (Ex.P/19) under Section 50 of the NDPS Act and made him aware of his legal rights, on which he consented to be searched by the police. Personal search of the police party and the witnesses was also made by the appellant vide Exs. P/1 & Ex. P/2. After receiving consent of the appellant vide Ex. P-19 itself, from search of the appellant contraband like Brown Sugar was recovered and on being examined it by seeing, smelling and burning it was found to be contraband (Brown Sugar) vide Ex.P/21. Weight of the alleged brown sugar was 18.140 grams and the weight of the packets on

which the brown sugar was kept was 1 gram & 400 milligrams. Subsequent to that, it was found that excluding the weight of packets, the weight of the contraband was 18 grams & 140 miligrams vide P/15. One packet of 18 grams & 140 grams of the said brown sugar and another empty packets of polythene was prepared and the said packets were duly sealed and kept in Malkhana and specimen of seal was affixed on the seizure memo vide Exs. P/23 & P/24, respectively. The accused was arrested vide Ex.P/25., intimation of the entire proceedings was forwarded to the office of City Superintendent of Police, Ambikapur vide Ex.P/18. After reaching police station, FIR (Ex-P/27) was registered against the appellant under Section 8 /21 of the NDPS Act. The remaining contraband was deposited in Malkhana and sample was sent to FSL for chemical examination, which was received by FSL, Raipur on 12.06.2007 with intact seal and report of FSL is Ex.P/32 which confirms the seized contraband to be Di-acital Morphine (Brown Sugar).

11. Manoj Upadhyaya (PW01) has proved documents vide Ex. P/01 & Ex.P/2 regarding search of independent witnesses & police Officials made by the accused.

12. Ramdas Ram (PW02), Malkhana Muharrir has proved the seized article kept in Malkhana in safe custody and he proved the documents and there is no reason to disbelieve the statement of this witness as there is no contradiction and omission found in his statement.

13. Ramdas Ram (PW02) has also proved the documents Ex. P/3 to Ex.P/11.

14. Vijay Ravi (PW03) has stated in his evidence that he has sent the seized article to FSL and proved its receipt vide Ex. P/12.

15. In the instant case, the independent witnesses namely Santosh Kumar Singh (PW- 07) has supported the statement of R. B. Pandey (PW08) and duly signed and admitted their signature on the documents i.e. Exs. P/1, P/2, P/7, P/14, P/15, P/17, P/19, P/20, P/22 and P/24 and, therefore, there is no reason whatsoever to discard / disbelieve the evidence of these police officials witnesses & independent witnesses for the purpose of convicting and sentencing the accused/appellant as aforementioned particularly when he has admitted his signatures on the requisite documents.

16. Mukesh Soni (PW04) has stated in his evidence that in his presence the weighing panchanama (Ex.P-15) was prepared and he has duly signed on those documents and also supported the case of the prosecution.

17. Sanjay Pandey (PW06), head Constable submitted the secrete information and the draft of non obtaining of search warrant to the Office of City Superintendent of Police, Ambikapur Vide Ex. P/16 & P/17 and has proved the same.

18. Manoj Upadhayaya (PW01), Ramdas Ram (PW02), Vijay Ravi (PW03), Arun Dubey (PW05), Sanjay Pandey (PW06) and R. D. Pandey (PW08) are admittedly official witnesses/police

personnel involved in the investigation and all of them have categorically stated as to the manner in which the search, seizure and other relevant proceedings were conducted. They were performing their official duties at the relevant time and their evidence does not suffer from any contradiction or exaggeration. Their evidence also find due support from the independent witnesses Mukesh Soni (PW04) & Santosh Kumar Singh (PW07). As such there is no reason to disbelieve the evidence of the aforesaid witnesses. The defence could not bring anything on record which could suggest that the Police personnel were having any enmity with the accused/appellant for his false implication in this case.

19. It is well settled principle of law that even in the cases where independent witnesses were either not examined before the trial court or on examination they turned hostile, conviction can be based on the testimonies of Police Officials involved in the investigation provided their evidence is impeccable and free from the suspicion of falsity [**Pramod Kumar V. State (GNCT) of Delhi** reported in **AIR 2013 Supreme Court 3344** and **Baldev Singh Vs. State of Haryana** reported in **(2015) 17 SCC 554**]. However, in the present case not only the Police Official had duly supported the prosecution case but the independent witnesses have also lent corroboration to their evidence.

20. In the recent judgment dated 26.10.2020 delivered by the Hon'ble Supreme Court in the matters of **Rajesh Dhiman Vs.**

State of Himachal Pradesh in (CRA No. 1032 of 2013) and Gulshan Rana Vs. State of Himachal Pradesh in (CRA No. 1126 of 2019), where the accused/appellants were acquitted of the charge under Section 20 of the NDPS Act by the trial Court and later convicted under the said Section by the High Court, affirming the judgment of conviction of the High Court, the Apex Court referring to its earlier various judgments holding the field, held that non-examination of the independent witnesses or independent witnesses turning hostile would not *ipso facto* be fatal to the prosecution case if the evidence of the official witnesses/police personnel remain impeccable and free from the suspicion of falsity.

21. Thus, regard being had to the overall evidence on record, oral and documentary, complicity of the accused/appellant in crime in question stands proved beyond all reasonable doubt. Being so, the findings recorded by the trial Court holding him guilty under Section 21(b) of the NDPS Act cannot be found faulted with and the same are hereby affirmed.

22. So far as the sentence part is concerned, considering the fact that the incident occurred way back in the year 2007 the appellant is facing trial since 2007, at the time of incident he was 42 years of age and at present he is on bail and the fact that the appellant has already remained in jail for 1 year, 2 months and 13 days, no other crime has been registered against the appellant of similar nature, keeping in view the judgment of the Hon'ble Supreme Court in the matter of **George Pon paul Vs. Kanagalet**

and Others (2009)13 SCC 478 wherein considering the fact that fine amount has been deposited and paid to the victim as also the long passage of time, the accused was sentenced to the period already undergone, this Court is of the opinion that the ends of justice would be served if the appellant is sentenced to the period already undergone by him while enhancing the fine amount.

23. Resultantly, the appeal is allowed in part. While maintaining conviction of the appellant under Section 21(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985, his jail sentence is reduced to the period already undergone by him. However, the sentence of fine of Rs.15,000/- with default stipulation as imposed by the trial Court shall remain intact.

The appellant is reported to be on bail, therefore, his bail bond shall remain in force for a period of six months from today in terms of provisions of Section 437A of Cr.P.C.

Sd/-

(Gautam Chourdiya)
Judge