

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 535 of 2004**

- Sushant Mandal, son of Shri Nirmal Mandal, aged about 22 years, resident of 36 years, Post- 72 D.S. Montu, District- Malkangiri, Orissa.

----Appellant**Versus**

- State of Chhattisgarh, Through the District Magistrate, Bastar, Jagdalpur.

---- Respondent

For Appellant : Shri Prafull N. Bharat, Advocate.
 For Respondent/State : Shri H. S. Ahluwalia, Dy. A.G.

Hon'ble Shri Justice Gautam Chourdiya**Judgment on Board****04.09.2020**

Proceedings of the matter have been taken-up through video conferencing.

1. This appeal arises out of the judgment of conviction and order of sentence dated 19.05.2004, passed by the Special Judge (N.D.P.S. Act), Bastar at Jagdalpur in Special Case No.03/2004, convicting the accused/appellant for the offence punishable under Section 20 (b) (ii-B) of the Narcotic Drugs and Psychotropic

Substances Act, 1985 (hereinafter referred to as "the Act") and sentencing him to undergo rigorous imprisonment for three years with fine of Rs.10,000/-, in default of payment of fine to further undergo rigorous imprisonment of nine months.

2. As per prosecution case, on 13.01.2004, M. B. Patel, Sub Inspector, who was posted at Police Station Nagarnar at the relevant time, received secret information that a person is standing near Dhanpunji Mandi along with a bag and is carrying contraband (Ganja). The said information was reduced in writing vide Rojnamchasana (Ex. P/1) & (Ex.P/2) and the said information was forwarded to Additional Superintendent of Police, Jagdalpur vide Ex. P/4C. Thereafter, he alongwith Police Officials & witnesses went to the spot and found that the present appellant is standing with a bag. The appellant has been informed about his legal rights before search and notice under Section 50 of the NDPS Act was given to him vide Ex. P/7. After receiving the consent of the appellant, he (Shushant Mandal) was searched by the police party. The police after conducting the said search made a recovery of 4 kgs. & 100 grams of Ganja from the exclusive possession of the appellant/accused. The appellant was arrested and samples were drawn on the spot. After completing the necessary and requisite formalities on the spot, the Investigating Officer came back to the Police Station where he recorded First Information Report against the appellant under Section 20(b) of the NDPS Act.

3. After usual investigation, charge sheet was filed against the

accused/appellant under Section 20 (b) of the NDPS Act. The Special Judge (N.D.P.S. Act) framed charge against the accused/appellant under Section 20(b) (ii-B) of the Narcotic Drugs and Psychotropic Substances Act, 1985. Accused denied the charge levelled against him and prayed for trial.

4. So as to hold the accused/appellant guilty, the prosecution examined 4 witnesses namely- M. B. Patel (PW-1), Gajadhar Pandey (PW-2), Jankush Toppo (PW-3), Butee (PW-4). 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.

5. 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 1 of this judgment.

6. Learned counsel for the appellant/accused submits that though he has raised various grounds in the memo of appeal, however, he is not pressing all those grounds and is confining his argument only to the extent that there is total non-compliance of statutory provisions under Sections 42 and 52 the NDPS Act by the Investigating Officer while conducting search & seizure proceedings of the alleged contraband (*Ganja*). He also submits that the seized contraband i.e. *Ganja* was not kept in safe custody,

therefore there may be chance to tamper with the seized article. Alternatively, he submits that appellant was 22 years of age at the time of incident and now he is aged about 38 years and looking to the fact that incident happened on 13.01.2004 i.e. near about 16 years lapsed and he has remained in jail for about 1 year & 23 days, it is prayed that the appellant may be sentenced to the period already undergone by him by giving him benefit of Probation of Offenders Act.

7. 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 of Sections 42 & 52 of the NDPS Act have been duly complied with by the investigating Officer while making search and seizure of alleged Ganja. Notice under Section 50 of the NDPS Act was duly given to the appellant, 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 from his possession the contraband was seized. Therefore, the appellant has rightly been convicted & sentenced by the Trial Court, which does not call for any interference in the instant appeal.

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

9. As per the evidence of M. B. Patel (PW01), Sub Inspector he received secret on 13.01.2004 from informant that one person

namely- Shushant Mandal is carrying *Ganja* in a bag and is standing near Dhanpunji. The said information was reduced into writing in Rojnamchasanha No. 447 vide Ex.P/1 & Ex. P/2 and forwarded the same to the Superior Officer i.e. Additional Superintendent of Police, Jadalpur vide Ex.P-4C. The police party along with witnesses namely Dashmu & Butee (PW04) went to the spot, apprehended the accused, gave him notice (Ex.P-7) 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 vide Ex.P-7 itself. Personal search of the police party and the witnesses was also made by the appellant vide Ex. P-8. From search of the bag the appellant was carrying, *Ganja* like substance was recovered and on being examined it by smelling and burning it was found to be *Ganja* vide Ex.P-10. On weighment being done of the contraband it was found to be 4 kgs. & 100 grams vide Ex. P-12. Two samples, each of 30 gms, were drawn from the said contraband and seizure memo (Ex.P-14) was prepared, the samples were duly sealed and kept in Malkhana and specimen of seal was affixed on the seizure memo. Spot Map (Ex. P-16) was prepared by Investigating Officer (PW-5). Dehati Nalisi (Ex. P/17) was prepared, the accused was arrested vide Ex.P-15, intimation of the entire proceedings was forwarded to the office of Superintendent of Police, Jagdalpur (Ex.P-22). After reaching police station, FIR (Ex-P-19) was registered against the appellant under Section 20(b) of the NDPS Act. The remaining contraband

was deposited in Malkhana, samples were sent to FSL for chemical examination, which was received by FSL on 15.01.2004 with intact seal and report of FSL is Ex.P-28 which confirms the seized contraband to the *Ganja*.

10. Gajadhar Pandey (PW-2) and one independent witness namely Butee (PW04) have supported the prosecution case. The independent witness Butee (PW04) has stated that alleged contraband article like - *Ganja* was seized from the exclusive possession of the accused/appellant and he also proved & signed the relevant documents i.e. Ex. P/2, P/3, P/6, P/7 & P/8 to P/15.

11. From careful perusal of the evidence of aforesaid witnesses, it is apparent that there is no reason whatsoever to disbelieve the statements of the aforesaid prosecution witnesses i.e. M. B. Patel (PW-1), Gajadhar Pandey (PW-2), Butee (PW-4), who is independent witness in this case and there is no specific defence taken by the appellant/accused as to why he has been falsely implicated in the crime in question. It is also apparent from the evidence on record that all the mandatory provisions as provided in NDPS Act have been duly complied with by the investigating Officer while making search and seizure of alleged contraband (*Ganja*). M. B. Patel (PW01) after receiving the secrete information on 13.01.04 at about 7.30 am recorded the same in Rojnamchasana (Ex. P/1 & 2) and forwarded the secrete information to his superior Officer i.e. Additional Superintendent of Police, Jadgalpur vide Ex. P/4C. On reaching the indicated place

with the Police Officials and the witnesses, M. B. Patel (PW01) gave notice under Section 50 of the Act to the appellant vide Ex. P/7 and after obtaining his consent, the search of the appellant was made and from his possession contraband (Ganja) was seized. The above fact have been duly proved by the Gajadhar Pandey (PW02) and Buttee (PW04) who is the independent witness in this case. Therefore, the provisions of Section 42 & 50 of the Act has been duly complied with by the Investigating Officer while conducting search & seizure.

12. M. B. Patel (PW01) has stated that the appellant was arrested vide Ex. P/15 and information regarding his arrest was sent to his relative through Police Station Montu District-Malkangiri Orissa *via* Radio Msg. Vide Ex. P/20. He further states that he alongwith the accused, the seized contraband (Ganja) and the samples returned the Police Station and registered the Fir vide Ex. P/19. The seized articles including the samples were handed over to Jankush Toppo (PW-3), Malkhana Muharrir to the safe custody. The above fact has been proved by Jankush Toppo (PW-3). M. B. Patel (PW01) has further stated that the information regarding the arrest of the appellant, registration of the crime and seizure was forwarded to the special Court vide Ex. P/21 and a separate information regarding the offence was forwarded to the Superintendent of Police, Jagdalpur vide Ex. P/22. The above information was also forwarded to the Additional Superintendent of Police, Jagdalpur vide ex. P/23. The aforesaid evidence of M. B.

Patel (PW01) has not been controverted by the defence and therefore it stands proved that the information regarding entire proceedings conducted by the M. B. Patel (PW01) was duly forwarded by him to his superior authorities.

13. M. B. Patel (PW01) has stated that the sample packets were sent to FSL, Raipur through constable- Umashanker Kortiya vide Ex. P/24 and receipt was obtained vide Ex. P/25. As per FSL report Ex. P/28 the contraband was found to be *Ganja*. From the report Ex. P/28 it is clear that the sample received by the laboratory bears the same seal as is mentioned in the seizure memo (Ex.P/14). The defence has failed to illicit from the prosecution witnesses which could suggests that the witnesses had any interest or enmity with the appellant/accused for his false implication. Thus, from the aforesaid documentary and overall evidence available on record it stands proved that the Investigating Officer has duly complied with the provisions of Section 52 of the Act and there was no tampering with the articles seized as contended by the counsel for the appellant.

14. 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 20(b) (ii-B) of the NDPS Act cannot be faulted with and the same are hereby affirmed.

15. So far as the sentence part is concerned, considering the

fact that the incident occurred way back in the year 2004, the appellant is facing trial since 2004, at the time of incident he was 22 years of age and at present must be of 38 years and the fact that the appellant has already remained in jail for 1 years & 23 days and at present he is on bail, this Court is of the opinion that the ends of justice would be served if he is sentenced to the period already undergone by him while keeping the fine sentence with default stipulation as imposed by the trial Court intact.

16. Resultantly, the appeal is allowed in part. While maintaining conviction of the appellant under Section 20(b) (ii-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.10,000/- 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