

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 570 of 2019

Rakesh Kumar Chandravanshi @ Chhotu, S/o Late Brajesh Ram, aged about 32 years, Occupation- Laborer, R/o Village- Gardevi, Ward No. 3, Gadhwa, P.S.- Gadhwa District- Gadhwa (Jharkhand) Presently R/o Village- Nagwa Mohalla Ward No. 10, Gadhwa, P.S.- Gadhwa, District- Gadhwa (Jharkhand)

---- Appellant

Versus

State of Chhattisgarh, Through Station House Officer, P.S.- Ramanujganj, District- Balrampur (C.G.)

---- Respondent

For Appellant : Mr. Shakti Raj Sinha, Advocate.
For State/respondent : Mrs. Shubha Shrivastava, P.L.

Hon'ble Shri Justice Ram Prasanna Sharma

JUDGMENT ON BOARD

20.01.2020

1. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 08.03.2019 passed by Special Judge (NDPS Act), Balrampur, District- Balrampur- Ramanujganj (C.G.) in Special Criminal (NDPS Act) Case No. 11/2018, wherein the said court convicted the appellant for commission of offence under Section 21(b) of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short "the Act, 1985") and sentenced to undergo R.I. for 7 years and fine of Rs. 50,000/- with further default stipulations.
2. As per case of the prosecution, the appellant was in possession of

contraband article- Diacetylmorphine (Brown Sugar) to the tune of 25.10 grams that is why legal formalities were conducted against him. The appellant was charge-sheeted and after completion of trial, the trial court convicted as mentioned above.

3. Learned counsel for the appellant submits as under:-
 - (i) Statement of prosecution witnesses is contradictory in nature and search & seizure is also not supported by independent witnesses.
 - (ii) The mandatory provisions of the Act, 1985 have not been complied with, but the trial court overlooked the same and recorded finding of conviction which is not sustainable, therefore, the finding arrived at by the trial court is liable to be set aside.
4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on relevant material placed on record and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.
5. I have heard learned counsel for the parties and perused the records.
6. Sub-Inspector- Amit Baghel (PW-9) received information on 19.11.2017 regarding possession of Brown Sugar by the appellant. This information was recorded by him and the same was sent to superior authorities i.e. Sub-Divisional Officer (Police), Ramanujganj as per Ex.P/22. Two independent witnesses were called and one Panchnama was prepared as per Ex.P/2 and information was sent to Sub-Divisional Officer (Police), Ramanujganj regarding proceeding of the investigation without search warrant as per Ex.P/23. This officer

and other police personnels with independent witnesses reached to the spot and after giving him opportunity to be searched by Gazetted officer or Magistrate and after obtaining his consent to be searched by this police officer, he was searched and six packets were found in inner side of his shocks which was seized and the same was found to be 25 grams & 10 milli grams.

7. Information regarding search and seizure was given to the superior authorities and seized article was deposited in Malkhana as per Ex.P/21. The seized article was sent for examination to Forensic Science Laboratory and test of Diacetylmorphine was found positive as per Ex.P/29. Version of this witness is un-rebutted during cross-examination and it is supported by version of Constable- Sunil Kumar Rajak (PW-3), Assistant Sub-Inspector- Manoj Kumar Singh (PW-6), Head Constable- Anil Patel (PW-7) (In-charge of Malkhana) & Assistant Sub-Inspector- Ramesh Toppo (PW-8).
8. From their evidence, it is clearly established that the information was sent as per Section 42 of the Act, 1985 and right of search was provided to the appellant as per Section 50 of the Act, 1985. The seized article was kept in safe custody of Malkhana as per Section 55 of the Act, 1985 and the information regarding search and seizure was sent to the superior authorities as per Section 57 of the Act, 1985. All the mandatory provisions of the Act, 1985 have been complied with in the present case, therefore, argument advanced on behalf of the appellant is not sustainable.
9. The quantity of contraband article seized in the present case is neither

small quantity nor commercial quantity, therefore, commission of offence by the appellant falls within mischief of Section 21(b) of the Act, 1985 for which the trial court convicted the appellant and the same is hereby affirmed.

Heard on the point of sentence.

10. For commercial quantity i.e. for 250 grams, the minimum jail sentence is 10 years. In the present case, the quantity is about 25 grams. The appellant is in jail since 20.11.2017 and he has completed jail sentence of 2 years and 2 months and he has deposited the entire fine amount. Considering the facts and circumstances of the case, this Court is of the opinion that the ends of justice would be met if the appellant is sentenced to the jail sentence of the period already undergone by him. Accordingly, his sentence is reduced to the period already undergone by him. He be set at liberty forthwith if not required in any other case. However, the fine amount imposed by the trial court shall remain intact.
11. With these modifications, the appeal is partly allowed.

Sd/-
(Ram Prasanna Sharma)
Judge