

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1209 of 2014

- Saiyyad Ajmad S/o Saiyyad Mukaddar, aged about 30 Years R/o Azad Nagar, Near By Nala, First Street, Police Station Gadge Nagar, District Amrawati (Maharashtra), Maharashtra

---- Appellant

Versus

- State Of Chhattisgarh Through - Police Station - G.R.P. Raipur, District - Raipur C.G.

---- Respondent

For Appellant	:	Mr. Anil Gulati, Advocate.
For State/Respondent	:	Mr. HS Ahluwalia, Dy. A.G.

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

02.07.2021

1. The matter is heard through Video Conferencing.
2. This appeal has been preferred against the judgment dated 26.09.2014 passed in Special Criminal Case No.417/2014 by the learned Special Judge(N.D.P.S Act), Raipur (C.G.) wherein, the Appellant has been convicted for the offence punishable under Section 20 (b) (ii) (C) of Narcotic Drugs Psychotropic Substances Act and sentenced to undergo R.I. for 10 years and to pay fine of Rs.100,000/-, with default stipulation.

3. According to the case of prosecution, on 31.03.2014, Inspector Shanker Chandraker (PW-8), received an information from informant that one person brought contraband *Ganja* from train and he was sitting at platform No. 1 in Raipur station. He recorded the above information in Rojnamcha Sanha and reached the spot. On being searched, the Appellant had carried two bags, from one bag 8 kgs. and from the another bag 12 kgs. total 20 Kgs. of contraband *Ganja* has been seized from his possession. Thereafter, Inspector Shanker Chandraker (PW-8) prepared two sample packets of 50 grams each and after completion of other formalities he returned to the police station along with the seized property and the Appellant, then he recorded the FIR and deposited the seized property in Malkhana thereafter, sample packets were sent for examination to the FSL. After completion of investigation, charge-sheet was filed by the police. To robe the Appellant in the crime-in-question prosecution examined as many as total 8 witnesses. In the statement of the Appellant recorded under Section 313 of Cr.P.C, the Appellant pleaded his innocence and false implication in the matter, however no defence witness was examined by the Appellant. After completion of trial, the Trial Court convicted and sentenced the Appellant as mentioned in Para 02 of this judgment. Hence, this appeal.

4. Learned Counsel appearing for the Appellant submits that

under Section 2(Vii-a) of the NDPS Act, quantity of the contraband recovered should be more than 20 kgs. Relying upon the judgment of Delhi High Court passed in CRL.A. No.89/2011 passed on 17.05.2012 *Ranjeet Singh Vs. State*, it has been argued by the Counsel that, if the quantity of contraband is 20kgs. or less than 20 kgs., a person can not be convicted for the offence punishable under Section 20(b) (ii)(C) of the NDPS Act instead of that he/she can be convicted only for the offence punishable under Section 20(b) (ii)(B) of the NDPS Act.

5. On the contrary, learned State Counsel opposes the argument advanced by learned Counsel for the Appellant and supported the impugned judgment.
6. I have heard learned counsel appearing on behalf of the parties and perused the record minutely. I have also gone through the provisions of Section 2(Vii-a) of the NDPS Act.
7. For the convenience, Section 2(Vii-a) of the NDPS Act is reproduced as under:-

“Commercial Quantity”, in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette.

Therefore, the commercial quantity of *Ganja* will be

greater than 20 kgs. As provided in the official Gazette/table at Serial No. 55.

8. In case of *Ranjeet Singh Vs. State* (Supra), learned Single Judge of Delhi High Court is also of the view that commercial quantity of *Ganja* is greater than 20 Kgs as provided in the official Gazette/table at Serial No. 55.
9. In the case in hand also the quantity of seized contraband *Ganja* is 20 Kgs. which can not be said as “commercial quantity”, therefore, I am of the view that conviction of the Appellant under Section 20 (b) (ii) (C) of the NDPS Act is not sustainable instead of he can be convicted only for the offence punishable under Section 20 (b) (ii) (B) of the NDPS Act. Accordingly, the Appellant is convicted for the offence punishable under Section 20 (b) (ii) (B) of the NDPS Act.
10. With regard to the sentence, it is prayed by learned Counsel for the Appellant that the Appellant is in jail since 31.03.2014, he is already completed more than 7 years in jail. He has no criminal antecedent and he is facing the *lis* since 2014. Looking to the above, I am of the view that the ends of justice would be met if, while upholding the conviction imposed upon the Appellant, the jail sentence awarded to him is reduced to the period already undergone by him. The fine sentence is also reduced from Rs. 1,00,000/- to 5,000/-.
11. Consequently, the appeal is partly allowed. The conviction of

the Appellant under Section 20 (b) (ii) (C) of the NDPS Act is altered to Section 20 (b) (ii) (B) of the NDPS Act and he is sentenced to the period already undergone by him. The fine sentence is reduced from Rs. 1,00,000/- to 5,000/-. In default of payment of the fine amount, the Appellant shall be liable to undergo simple imprisonment for two months.

12. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge