

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 583 of 2014**

State of Chhattisgarh, Through : Police Station – G.R.P., Bilaspur, District
– Bilaspur (C.G.)

---- Appellant**Versus**

Mukesh @ Kailash, S/o – Mahesh Yadav, Aged about -23 years, R/o –
Bhat Khamaria, P.S. - Lormi, District Bilaspur (C.G.)

----Respondent

For Appellant	:	Mr. Devesh Chand Verma, Govt. Advocate.
For Respondent	:	None present.

Hon'ble Shri Justice N.K. Chandravanshi**Order On Board****13.09.2021**

(1) Heard on applicant for grant of leave to appeal under Section 378 (3) of CrPC as well as on admission.

(2) This Cr.M.P. has been preferred against the judgment of acquittal dated 7th January, 2014 passed by Special Judge (NDPS Act), Bilaspur in Special Case No. 05/2013 whereby respondent/accused has been acquitted of the charge under Section 20 (b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for brevity “the NDPS Act”) extending him benefit of doubt.

(3) Brief facts of the case are that on 24.02.2013 on being receiving secret information, Sub Inspector S.L. Navratan (PW-7) caught red handed the

respondent/accused, who was having possession of 6 kilogram of contraband article *ganja* unauthorizedly and without authority of law and the same was seized, from possession of respondent/accused after following due procedure of law. After usual investigation, charge-sheet under Section 20 (b) of the NDPS Act was filed before the Special Judge (NDPS Act), Bilaspur. Charges under Section 20 (b)(ii)(B) of the NDPS Act was framed and the same was read and explained to the respondent/accused, which he denied and his plea was recorded.

(4) To substantiate the charges, the prosecution has examined as many as seven witnesses. Statement of the respondent/accused was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication in the case. Respondent has not examined any witness in his defence.

(5) After considering the evidence adduced by the prosecution, the trial Court has acquitted the respondent/accused of the charges levelled against him by extending him the benefit of doubt. Hence, this Cr.M.P..

(6) Learned Counsel for the State/appellant would submit that from the ocular and documentary evidence adduced by the prosecution, the alleged charge has been proved against the respondent/accused, despite that learned court below unnecessarily doubting the credibility on the evidence available on record extended the benefit of doubt by acquitting the respondent/accused, which is perverse and unsustainable in law.

(7) I have heard learned counsel appearing for the State /appellant and perused the record of court below including judgment impugned with utmost circumspection.

(8) Sub-Inspector - S.L. Navratan (PW-7), who is Investigating Officer of this case, has stated in his deposition that 6 kilograms of contraband article Ganja has been seized from the exclusive possession of the respondent/accused, which was wrapped in polythene and the same were kept in black colour college bag. He has further deposed that during the course of investigation, he extracted some quantity of alleged Ganja from each packet and from which, two samples weighing 50 gms each were prepared and marked the same as A-1 & A-2. He has also stated that aforesaid articles have been seized vide seizure memo (Ex.P-11) but he has not stated that aforesaid articles including Sample A-1 & A-2 were sealed after seizure and this fact has also not been mentioned in seizure memo (Ex.P-11). Copy of register of seized article i.e. Malkhana Register (Ex.P-16) has also been proved by Sub-Inspector - S.L. Navratan (PW-7) but it has also not been mentioned in Malkhana Register (Ex.P-16) that seized articles were kept in *Malkhana* after putting seal upon it.

(9) At this stage, it would be appropriate to notice the provisions contained in Section 55 of the NDPS Act, which reads thus :-

“55. Police to take charge of articles seized and delivered.” An officer-in-charge of a police station shall take charge of and keep in safe custody, pending the orders of the Magistrate, all articles seized under this Act

within the local area of that police station and which may be delivered to him, and shall allow any officer who may accompany such articles to the police station or who may be deputed for the purpose, to affix his seal to such articles or to take samples of and from them and all samples so taken shall also be sealed with a seal of the officer-in-charge of the police station.”

(10) Roop Kishore Sen (PW-5), who was also the team member of the said proceedings of seizure, has stated in his deposition that two samples containing 50 gms. each had been sealed and the same were handed over to him to deposit at Malkhana and he had also given receipt (Ex.P-15) to that effect and he has also proved his signature over the said receipt as “A” to “A”. Sub Inspector S.L. Navratan (PW-7) has also proved his signature on the said receipt (Ex.P-15), in which it has been mentioned that two samples containing 50 gms. each had been sealed but since seizure memo (Ex.P-11), which is primary document of seizure and malkhana register (Ex.P-16) does not contain the fact that alleged two samples had been sealed after its seizure and malkhana register also does not show the aforesaid fact, which is violative of mandatory provisions contained in Section 55 of the NDPS Act, therefore, learned trial Court has not committed any error in holding that in such a situation, it cannot be believed beyond reasonable doubt that contraband article seized were kept in malkhana of GRP police station and the articles sent for chemical examination was that articles, which has been allegedly seized from the possession of respondent/accused. The trial Court has elaborately discussed the entire evidence and recorded

finding of acquittal. After going through the record, this Court is of the view that judgment of acquittal passed by the learned trial Court by extending the respondent/accused benefit of doubt is not required any interference of this Court. It is also not a case where the respondent/accused should be called for full consideration of the petitioner.

(11) Accordingly, the application for leave to appeal is rejected. Consequently, the CrMP stands dismissed.

Sd/-

(N.K. Chandravanshi)
Judge

D/-

