

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (DB) No.100 of 2023**

Arising Out of PS. Case No.-20 Year-2017 Thana- BAISI District- Purnia

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LAKHAN SINGH Son of Late Thakur Singh Resident of Ashok Vihar, P.S.-  
Kotwali, District - Bharatpur (Rajasthan)

... .. Appellant/s

Versus

1. The State of Bihar
2. The Union of India, N.D.P.S.

... .. Respondent/s

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**Appearance :**

For the Appellant/s : Mr.Asif Kalim, Adv  
For the Respondent/s : Ms.Shashi Bala Verma, APP

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH**

**and**

**HONOURABLE MR. JUSTICE NAWNEET KUMAR**

**PANDEY**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)**

**Date : 30-08-2023**

The appellant has preferred this appeal under Section 374(2) of the Code of Criminal Procedure, 1973 assailing the judgment of conviction dated 26.02.2021 and an order of sentence dated 02.03.2021 passed by the learned 1<sup>st</sup> Additional Sessions Judge, Purnea in Special NDPS Case No. 3 of 2017 (CIS No. 154 of 2017), whereby and whereunder the appellant has been convicted and sentenced as under :-



| Penal Provision                       | Sentence                           |            |                    |
|---------------------------------------|------------------------------------|------------|--------------------|
|                                       | Imprisonment                       | Fine (Rs.) | In default of fine |
| Section 20(b) (ii)(C) of the NDPS Act | Rigorous imprisonment for 12 years | 1 Lakh     | R.I for one year   |

2. Though this criminal appeal has been recently filed in 2023, putting to challenge a trial court’s judgment of conviction and the order of sentence as noted above passed in February, 2021, hearing of this appeal has been expedited, taking into account, the fact that the appellant has remained in custody for more than six and a half years and in normal course, there being no likelihood of this appeal being taken up for final hearing. Secondly, from the impugned judgment itself, it would appear that the age of the appellant was 74 years as on the date of judgment of the trial court. It may also be noted that the appellant had not preferred any appeal against the judgment of conviction and an order of sentence passed by the learned trial court. Steps were taken by District Legal Services Authority (DiLSA), Purnea for filing appeal by sending documents to the Bihar Legal Services Authority which documents were sent to the Patna High Court Legal Services Committee for filing an appeal and accordingly, the present appeal has been filed by a



learned panel lawyer on behalf of the appellant, authorized by the Patna High Court Legal Services committee.

3. Shankar Kumar Singh (PW-2), an Inspector Excise Department, Purnea is the informant of this case based on whose written report addressed to the Officer-In-Charge, Biasi P.S. Case No. 20 of 2017 came to be registered on 22.02.2017. According to the, prosecution's case as disclosed in the written report, the informant with other excise personnel were engaged in checking of vehicles on a highway, in course of which, at about 5:00 pm, on 21.02.2017 a truck bearing registration no. RJ05 GB 2764 was intercepted. The driver of the truck disclosed his name (Lakhan Singh the appellant herein) who was aged about 70 years. He also disclosed that he was coming from Siliguri and was destined to go to Naugachia. From the said truck, 13 bags of *ganja* came to be recovered. On interrogation, he disclosed that the consignment was to be delivered at zero miles Purnea. He did not disclosed the name of the consignee. The *ganja* was seized in the presence of two independent witnesses, viz Munna Yadav (not examined) and Ajay Yadav (PW-4). The seizure list was prepared, a copy of which was handed over to the appellant and the appellant was arrested. The appellant, the seizure list, the arrest memo and the



seized articles with the vehicle were handed over to the Officer-In-Charge of the Police Station.

4. It is evident from the written report (Exhibit-2) that it is dated 22.02.2017. From the formal FIR it appears that the information regarding occurrence was received at the police station at 11:00 am on the next day i.e. on 22.02.2017, apparently with the submission of the written report by the informant, whereafter the FIR was immediately registered. The distance of the police station from the place of occurrence as mentioned in the formal FIR (Exhibit-6) was 6 km. Be it noted that in the written report there is no mention of weighment of the contraband said to have been recovered and subsequently seized. The FIR was registered disclosing commission of offence punishable under Section 20 of the NDPS Act. The appellant was remanded to the judicial custody on 22.02.2017. It further transpires that soon thereafter the Investigating Officer made an application before the learned Sessions Judge, Purnea for deputing a Magistrate for the purpose of drawing of samples of the seized *ganja* for the same being sent to Forensic Science Laboratory, Patna and Chemical Laboratory House, Kolkata, an order was passed on the application filed by the Investigating Officer on 23.02.2017 by the learned Sessions Judge, Purnea



requiring learned CJM, Purnea to depute a Magistrate for verification of the process of preparation of sample of the seized *ganja*. The Investigating Officer submitted his chargesheet against the appellant on 31.07.2017, for commission of offence punishable under Section 20 of the NDPS Act. Cognizance was taken and subsequently charge was framed against the appellant for commission of offence punishable under Section 20 of the NDPS Act on 23.09.2017. The appellant denied the charge and claimed trial. Accordingly, he was put to trial.

5. At the trial, the prosecution examined altogether five witnesses namely the informant Shankar Kumar Singh (PW-2), Sub-Inspector Pankaj Kumar (PW-1) and an Assistant Sub-Inspector Ashok Ranjan Chaudhary (PW-3) who was accompanying PW-2 when the vehicles were being checked by them. Out of the two seizure list witnesses, one, namely Ajay Yadav deposed at the trial as PW-4. Nagina Kumar, I.O. deposed at the trial as PW-5.

6. Apart from the oral evidence of the prosecution's witnesses the prosecution also proved at the trial, the seizure list (Exhibit-3), signatures on the seizure list as Exhibit-1, 1/A and 1/2, the FSL report (Exhibit-4) and CRCL report of Kolkata (Exhibit-5). The samples sent for forensic and chemical



examination were found to be *ganja*. The formal FIR came to be proved as Exhibit-6.

7. It may be noticed at this juncture that no material exhibit was produced before the trial court i.e., neither the remnant of the seized contraband were adduced nor the remnants of samples which were returned by CRCL, Kolkata after conducting chemical examination was produced at the trial. After closure of the evidence of the prosecution's witnesses the appellant was questioned under Section 313 of the CrPC so as to give him an opportunity to explain the circumstances emerging against him based on the evidence adduced by the prosecution. Following were the three questions put by the trial court to the appellant for his examination under Section 313 of the CrPC:-

"प्रश्न:- क्या आपने गवाहों का बयान सुना है?

उत्तर:- जी हाँ।

प्रश्न:- गवाहों का कहना है की आपने दिनांक -21 /02 /2017 को आपका ट्रक नंबर RJ05 GB 2764 से 737.710 किलोग्राम गांजा ले जाते हुए जब्त किया है।

उत्तर:- जी नहीं।

प्रश्न:- सफाई में क्या कहना है?

उत्तर:- निर्दोष हूँ झूठा फसाया गया है।"

8. The appellant answered in negative questions nos. 2 and 3. No defence witness was examined at the trial. The trial



court after having appreciated and evaluated the evidence on record has held the appellant guilty of the offence punishable under Section 20(b)(ii)(C) of the NDPS Act and sentenced him to imprisonment and fine as has been noted above.

9. Mr. Asif Kalim, learned counsel representing the appellant has submitted that delay in drawing of the samples itself is fatal to the prosecution's case since according to the FIR the recovery was made on 21.02.2017, whereas the samples were drawn on 08.04.2017. He has further submitted that there is no explanation as why after the seizure of huge quantity of *ganja* on 21.02.2017 weighing 737.710 Kg packed in 13 plastic gunny bags was handed over to the officer-in-charge of the police station on the next day at 11:00 am when the distance of the police station from the place of occurrence was hardly 6 kms. He has further argued that the seizure list witness Ajay Yadav (PW-4) has not supported the prosecution's case and though he has proved his signature on the seizure list, he deposed that no recovery was made in his presence and that his signature was obtained on a blank paper. He has further argued that non-production of the material exhibits at the trial is yet another ground on which the appellant deserves acquittal by giving him benefit of doubt. The other seizure list witnesses



have not been examined at the trial, the prosecution failed to prove that the seizure was made in accordance with law in the presence of two independent witnesses. It has also been argued that while examining the appeal under Section 313 of the CrPC the trial court did not bring to his notice the circumstances emerging from the evidence adduced at the trial that the seized articles were found to be *ganja* by the Forensic Science Laboratory, Patna and CRCL, Kolkata. He accordingly, contends that said circumstance ought not to have been taken into account by the trial court while recording its finding.

10. Learned Additional Public Prosecutor, representing the State, on the other hand has submitted that the appellant was found to be driving the truck on which 737.710 kg of *ganja* was found to be loaded. As the seizure was made at about 7:00 pm on 21.02.2017. Handing over of the seized articles and the accused being arrested by the police on the very next day i.e., 22.02.2017, cannot be said to be a belated compliance of the statutory requirement. She has argued that there has been substantial compliance of the requirement under Section 313 of the CrPC and the appellant has not been able to demonstrate before this Court that he suffered any prejudice because of any circumstance not having been brought to his notice by way of



questions put by the trial court. She accordingly, submits that the impugned finding of conviction does not suffer from any legal infirmity requiring this Court's interference.

11. We have perused the impugned judgment of the trial court and the lower court's records. We have carefully appreciated the evidence adduced at the trial. We have given our thoughtful consideration to the rival submissions advanced on behalf of the parties.

12. Section 52(3) of the NDPS Act mandates that every person arrested and article seized under sub-section (2) of Section 41, Section 42, Section 43 or Section 44 of the Act shall be forwarded "without unnecessary delay" to the Officer-in-charge of the nearest police station or the officer empowered under Section 53 of the NDPS Act. We notice, in the present case, that according to the informant, the seizure was made and the appellant was arrested on 21.02.2017. After his arrest, the appellant and the seized articles were forwarded to the Officer-in-charge of the police station on the next day at 11:00 am. There is absolutely no evidence on record justifying delay in compliance of the requirement envisaged under Section 52(3) of the NDPS Act. How and where the articles seized by the excise officials were kept in a safe storage after seizure for the whole



night, is not at all clear from the evidence of prosecution's witnesses including PW-2 who was leading the team of the excise officials. Further, it is not mentioned in the FIR as to how the recovered articles were immediately weighed, though weight of the recovered articles has been mentioned on the seizure list as 737.710 kg. PW-2 in his deposition at the trial has mentioned that the place of occurrence was 40-45 km away from his office. *A fortiori*, it was required for him to have informed the police station which was just 6 km away from the place of occurrence. In his deposition at the trial, he testified that he had weighed the seized articles with an electronic scale borrowed from a nearby shop in Baisi market. He further deposed that he had handed over the recovered articles to the police station at 10:00 pm. On 21.02.2017, PW-1, in his deposition, while supporting the case of the prosecution of recovery and seizure of the contraband deposed that the team had reached the police station at 7:45 pm on 21.02.2017 after the seizure of the contraband. He also deposed that the contraband was weighed at the place of seizure itself after borrowing the weighing scale from a nearby shop. He, however, could not disclose the name of the shopkeeper from whom the weighing scale was brought. PW-3, another officer of the Excise Department, who was member of the team



has supported the prosecution's case and the recovery of the contraband.

13. The Investigating Officer in his deposition, contradicting the evidence of PW-2 deposed that a written report was handed over by the excise inspector at the police station on 22.02.2017 at 11:00 am in respect of the occurrence which had taken place at 7:00 pm on 21.02.2017. There is another peculiar aspect of the matter emerging from the evidence of the Investigating Officer. He deposed at the trial that the appellant was seen by him driving the truck to the police station when he was present at the police station. This evidence of the IO read with the evidence of PW-2 i.e. the informant, casts serious doubt on the prosecution's case. There is contradiction in the depositions of the informant and the IO in respect of the time when the seized articles and the arrested person i.e., the appellant were handed over to the police. According to the police, they did not have any information about the occurrence till 11:00 am on 22.02.2017.

14. In the aforesaid background, in view of the fact that the seizure list witness has not fully supported the prosecution's case, we do not consider it safe to uphold the finding of conviction based on the evidence of the excise officials i.e.,



PWs-1, 2 and 3. The appellant deserves to be acquitted by giving him benefit of doubt in the facts and circumstances as noted above.

15. Accordingly, the impugned judgment of conviction dated 26.02.2021 and the order of sentence dated 02.03.2021 passed by the learned 1<sup>st</sup> Additional Sessions Judge, Purnea in Special NDPS Case No. 3 of 2017 (CIS No. 154 of 2017), is hereby set aside.

16. This appeal is allowed.

17. Since the appellant is in custody, let him be released from jail forthwith, if not required in any other case.

**(Chakradhari Sharan Singh, J)**

**(Nawneet Kumar Pandey, J)**

ranjan/sudha-

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