



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO. 88 OF 2024

Shiba Mahadev Khara

Vs.

State of Maharashtra

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Ms. Shweta P. Chavhan, Advocate for appellant.
Shri Harshal D. Dubey, APP for respondent/State.

CORAM :- M. W. CHANDWANI, J.

DATED :- 25.04.2024

Heard.

2. The appellant has challenged the judgment and order of conviction dated 05.04.2021 passed by the learned Additional Sessions Judge (ASJ), Chandrapur in Spl. (NDPS) Case No. 5/2018, whereby the appellant has been convicted for the offences punishable under Sections 20(b)(ii)(c) and 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "NDPS Act") and has been sentenced to suffer imprisonment for 10 years and to pay fine of ₹1 lakh, in default to suffer further imprisonment for one year.

3. As per the prosecution case, on 17.07.2018, a Tata Indigo car was intercepted by the Police, wherein the appellant and other co-accused were travelling. The Police seized 144.242 kg. 'Ganja' from the dicky of the

said vehicle. After completing the necessary formalities, 'Ganja' was seized and charge-sheet came to be filed against the appellant and other co-accused. The trial was conducted by the learned ASJ at Chandrapur and by the impugned judgment and order, the appellant along with other co-accused were convicted for the aforesaid offence and was sentenced to suffer imprisonment as mentioned above.

4. It is to be noted here that co-accused- Omin Muka Kobasi, having a similar role in the crime, had filed an appeal bearing Criminal Appeal No. 14/2022. This Court allowed the appeal of the co-accused by judgment and order dated 10.11.2023 and acquitted the co-accused of the aforesaid offence by setting aside the conviction imposed by the Trial Court. The co-accused was acquitted mainly on the ground of non-compliance of the mandatory provisions for seizure and sampling of contraband, particularly enumerated in Section 52A of the NDPS Act. The appellant, who was also found along with the acquitted co-accused in Tata Indigo car where from the contraband was seized. Thus, the appellant is similarly situated as that of the co-accused, who has been acquitted by this Court.

5. Therefore, for the reasons mentioned in the judgment and order dated 10.11.2023 passed by this Court in Criminal Appeal No.14/2022, filed by the co-

accused, the present appellant is also entitled for acquittal. Hence, the following order is passed:-

- i) The appeal is allowed.
- ii) The impugned judgment and order dated 05.04.2021 passed by learned ASJ, Chandrapur in Spl. (NDPS) Case No. 5/2018 is hereby quashed and set aside in respect of the appellant.
- iii) The appellant- Shiba Mahadev Khara is acquitted of the offence punishable under Sections 20(b)(ii)(c) and 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985.
- iv) Bail bonds of the appellant stand cancelled.
- v) The appellant be set at liberty forthwith, if custody is not required in any other crime.

(M. W. CHANDWANI, J.)