



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 877 OF 2004

Digambar Bapurao Landge,
Age : 40 Years, Occu. : Auto Driver,
R/o. Banwas, Tq. Pallam,
Now HUDCO/116, Nanded.

**..... Appellant
(Ori. Accused)**

Versus

The State of Maharashtra

..... Respondent

.....

Advocate for Appellant : Mr. Shrikant B. Madde
APP for Respondent-State : Mr. V.M. Jaware

.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 23rd January, 2025

PRONOUNCED ON : 26th February, 2025

JUDGMENT :

1. Convict of offence under Section 8(c) punishable under Section 20(1)(b) of the Narcotic Drugs and Psychotropic Substances Act (in short, "NDPS Act"), takes exception to judgment and order dated 13.12.2004, passed by learned Special Judge, Latur in Special Case No.03 of 2003.

IN NUTSHELL, CASE OF THE PROSECUTION IS AS UNDER :

2. Acting on a secret information, Mr. Mahesh Sharma, Police Sub Inspector, Udgir Police Station, planned and arranged raid to be carried out in the vicinity of Udgir Bus Stand. Said officer headed the raiding team comprising of police staff, panchas, trader and photographer and they came across the appellant, whose description matched with the secret information. After completing the formalities, they introduced themselves and made inquiry with him and also offered their own search and thereafter, conducted search of bag in his possession which found to be containing 4 Kg. 800 Grams Ganja. Sample of 100 Grams Ganja was drawn. Seizure was conducted. The appellant was brought to the police station and on report of police officer, crime was registered.

3. After investigation and on gathering sufficient evidence, the appellant was charge-sheeted and tried before learned Special Judge, Latur vide Special Case No.03 of 2003. Before learned trial court, prosecution adduced evidence of in all seven witnesses and also relied on documentary evidence like FIR, Panchnama, C.A. report, etc. After appreciating the oral and documentary evidence, learned trial court has accepted the prosecution case as proved and by judgment and order dated 13.12.2004, convicted the appellant for offence

under Section 8(c) punishable under Section 20(1)(b) of the NDPS Act and sentenced him to suffer imprisonment for four years. Precisely, said judgment and order of conviction is now assailed before this court on various grounds spelt out in the appeal memo.

SUBMISSIONS

ON BEHALF OF THE APPELLANT :

4. Heard learned counsel for the appellant at length. The principle grounds of challenge are that, there is non compliance of provisions of Section 42(2) of the NDPS Act. That, there is no convincing, cogent and reliable evidence. That, provisions laid down under Sections 50 and 52 of the NDPS Act are also contravened. That, there is no independent witness. That, panchas have not supported. That, any gazetted officer was not present which was mandatory and for above reasons, impugned judgment is sought to be set-aside.

5. Learned counsel has placed reliance on rulings of the Hon'ble Apex Court in following cases.

- i) Simarnjit Singh Vs. State of Punjab, reported in 2023 (3) CriCC 160.*
- ii) Yusuf @ Asis Vs. State, reported in 2023 (4) RCR (Criminal) 686.*
- iii) Hasan Imam Inamdar Vs. State of Maharashtra, reported in 2003 All.M.R. (Cri.) 1889.*

ON BEHALF OF THE RESPONDENT-STATE :

6. In answer to above, learned APP opposed on the ground that, acting on a secret information, raid was conducted and it turned out to be successful as the appellant was found in possession of 4 Kg. 800 Grams Ganja, which was in his bag and which was in his very possession. Therefore, it was a conscious possession. That, C.A. report of seizure is positive. Learned APP pointed out that, I.O. did take steps to secure presence of Tahsildar and other gazetted officers, but as they were not available and as there was no time to be wasted, after taking necessary noticing in the station diary, which are got proved through I.O., raid was conducted. As such, there is no violation. According to him, merely on said doubt, no benefit would accrue to the appellant.

7. In support of above submissions, learned APP has placed reliance on the ruling of the Hon'ble Apex Court in case of ***Bharat Aambale Vs. State of Chhatisgarh, reported in 2025 SCC Online SC 110.***

EVIDENCE BEFORE THE TRIAL COURT :

8. In support of its case, the prosecution has examined in all seven witnesses. Their role and status and the sum and substance of their evidence can be summarized as under :

PW1 Mr. Dhanraj Vishwanath Patwari, Panch to the seizure panchnama. He did not support to the prosecution and turned hostile.

PW2 Mr. Dilip Ganptatrao Gaikwad, Panch to the seizure panchnama. He also did not support to the prosecution and turned hostile.

PW3 Mr. Shahabuddin Burhansab Shaikh, Naik Police Constable. In para.1 of his substantive evidence at Exh.13, he narrated as under :

“1. On 23-12-2002 I was on duty at Udgir City police station. On that day at about 11.00 A.M. PSI Sharma called me. He informed me to take the sample of ganja of crime No. 3087/2002 to C.A. office Aurangabad. Thereupon he handed over the sample in the form of cotton bag in sealed condition alongwith letter. Thereupon in the said night at about 11.45 P.M. I left Udgir by train, for reaching to Aurangabad. On 24-12-2002 I reached Auranagabad in the morning at about 7.00 A.M. I reached C.A. office at about 11.00 A.M. At about 11.30 A.M. I handed over the sample to C.A. Office Aurangabad and obtained endorsement on the copy of letter. Copy of the said letter now shown to me is the same with endorsement. It is marked at Exh.14. On next day I came to Udgir and handed over copy of letter to PSI Patel. The sample produced in the court is the same one.”

PW4 Mr. Abdul Bashir Mahboob Patel, P.S.I., Udgir Police Station. In para.1 of his substantive evidence at Exh.15, he narrated as under :

“1. On 22-12-2002 I was on duty as second P.S.I. at Udgir city police station. On 23-12-2002 investigation of crime No.3067/2002 was handed over to me. On that day I recorded statements of witnesses PSI Sharma instructed Shaikh constable to take sample to C.A. office Aurangabad. In due course C.A. report was received. It is marked at Exh.16. After completion of investigation charge sheet was submitted in the court. I have also produced on record true copies of station diary entries. The copies now shown to me are the same. Contents are as per original. It is marked at Exh.17. Accused was arrested by PSI Sharma. Accused before court is the same person.”

PW5 Mr. Mahesh Murarilal Sharma, P.S.I., Udgir Police Station. In para.1 of his substantive evidence at Exh.21, he narrated as under :

“1. On 22-12-2002 I was at Udgir City police station. In the said night at about 9.35 P.M. I received a secret information that a person has arrived at Udgir bus stand from Karnataka state and is in possession of ganja. Then I informed on phone to Dy.S.P. I also informed S.P. and also to P.I. I try to contact the Tahsildar on phone but he was not available. I tried to contact govt. medical officer, however this phone was not working. Thereupon I sent constable Kendre for calling

panchas. I sent constable Gadge to call trader and a photographer. After some time all came and P.I. also came to the police station. Thereafter at about 9-55 P.M. we proceeded to bus stand by a jeep. I myself, PI Shinde, constable Kendre, constable Gadge, constable Fulari, two panchas, a trader and photographer where in the said jeep. We all reached at the bus stand. The jeep was parked at a site. We proceeded towards platform No.1. A person was seen sitting on a bench on western side of the said platform. As discription of the said person was matching with the informed discription. The said person was enquired about his name with other preliminary enquiries. He disclosed his name as Digambar Bapurao Landge resident of Banwas Tq. Palama and presently residing at Nanded. He was enquired for the contents of the bag. He informed that household materials is in the bag. Thereupon I myself and PI Shinde introduced ourselves to the said person as police officers, and the said person was informed about our intention to conduct search with option in present of P.I. Shinde as gazetted officer or in presence of magistrate. The said person consented for conducting search in presence of PI Shinde. Then we ourselves gave our search to him. Thereupon his search was conducted. In the bag there was one more bag use for keeping manual. After opening the inner bag ganja giving strong odour was found. The said ganja was weighed by the trader. It was weighed 4 Kg and 800 gram. 100 gram ganja was separately collected for sample. Sample and remaining ganja was packed and sealed. Signature of panchas and trader were obtained on panchanama. Signature of accused was also obtained on panchanama. Thereupon alongwith accused we

came back to police station. Crime was registered. I recorded my complaint. Complaint now shown to me bears my signature. Receipt for property also bears my signature. The receipt was prepared by me after handing over the property. The bag of muddemal shown to me is the same. Contents of panchanama are correct. Panchanama bears my signature. It is marked at Exh.22. The contents of complaint are correct. It is marked at Exh.23. The contents of muddemal receipt are correct. It is marked at Exh.24. Station diaries entries were taken by me. Accused before court is the same person.”

PW6 Mr. Shamshoddin Gulamrasul Bagwan is a fruit seller. In para.1 of his substantive evidence at Exh.25, he narrated as under :

“1. On a day about a year ago I was called by the police. A constable came to me and informed that I am called by Sharma Saheb. I was also told to take alongwith me scale and weight measures. According I went to police station alongwith, scale and weight measures. I was told that raid is to be conducted at bus stand. I was taken to bus stand in a jeep. Sharma saheb and Shinde saheb and 2-3 other persons were present at the police station. We came to bus stand. After going to bus stand a person was accoused who was sitting there. A bag was with the said person. Officer informed the person that, his bag is to be searched. Sharma informed that for search he can be taken to other officer. The said person informed that his search may be conducted at the said place. The bag was opened. It was opened by Sharma. In the said bag green leaves with bad smeel were found. I was asked to weight the said material by

informing that it is ganja. It was weighing 4 kg and 800 gram. 100 gram ganja was seperately collected. Thereafter my signature was obtained and I was taken to police station. The panchanama now shown to me bears my signature. I am unable to identify the said person because of lapse of considerable long time.”

PW7 Mr. Dinkar Suryabhan Shinde, P.I., Udgir Police Station. In para.1 of his substantive evidence at Exh.26, he narrated as under :

“1. On 22-12-2002 I wa son duty as P.I. at Udgir city police station. On that day I was at my residence. In the night time at about 9.35 P.M. P.S.I. Sharma informed me at my residence about the information received by him. Immediately I went to police station. P.S.I. Sharma by that time made necessary arrangement for conducting a raid. Accordingly two panchas, a trader came to police station. Thereafter we all proceeded by a jeep. At about 10-00 P.M. we reached at S.T. bus stand Udgir. As per information platform No.1 was inspected. A person was seen sitting on a bench on the western side of the platform with a gunny bag on his laps. He was enquired. He was enquired by PSI Sharma. About the contents of the bag, name and destination to the said person. Initially the said person avoided to give answers. However, ultimately he informed that ganja is kept in the said gunny bag. Thereupon I introduced myself as police officer and also panchas and informed him about intention to conduct his search. He was given option to conduct the search in presence of Tahsildar. However he consented for search in my presence. Thereafter search of in all

members of raiding party was given to the said person. Thereafter in presence of panchas bag was opened by PSI Sharma. In the said bag ganja was found. The said ganja was weighed by a trader. It was weighing 4 kg. 800 gram. 100 gram ganja was separately collected and was kept in cotton bag. The said bag was sealed with lac seal. Thereafter on query the said person disclosed his name as Digambar Bapurao Landge resident of Banwas Tq. Pala,, presently residing at Nanded. Detail panchanama was prepared by PSI Sharma at the said place. Thereafter alongwith accused and seized ganaja, we came back to police station. At police station PSI Sharma recorded his complaint. Crime was registered against the accused. The panchanama shown to me bears my signature. Accused in dock is the same person.”

ANALYSIS

9. Re-appreciated the above evidence.

10. Crucial evidence is of **PW5** Mr. Mahesh Sharma, PSI and he, in his evidence at Exh.21, has stated that, while he was on night duty, at around 9.35 p.m., secret information was received about arrival of a person at Udgir Bus Stand from Karnataka State Transport Bus and said person to be in possession of Ganja. He claims to have reported his superiors i.e. Dy.S.P. as well as S.P. He categorically stated that, he also tried to contact the Tahsildar on phone, but he

was not available. That, he also tried to contact government medical officer, but his phone was not working. Therefore, he sent other constable for arranging panchas, trader and photographer. He further stated that, at around 9.55 p.m., they all proceeded to the bus stand. A person, whose description matched with the information received, was approached. Police party introduced themselves and made inquiry with him and also offered their own search and thereafter, conducted search of bag in his possession which allegedly contained 4 Kg. 800 Grams Ganja. Sample of 100 Grams Ganja was segregated and remaining Ganja was seized. The accused was brought to the police station. PW5 Mr. Mahesh Sharma lodged report against the accused and handed over the seized *muddemal* and panchanama was drawn to that effect.

Above officer is subjected to extensive cross-examination. However, he has reiterated therein that, the description received on secret information was noted in the station diary and he has already placed it on record, which is marked by learned trial Judge as Exh.17. That, he is unable to state the registration number of state transport buses which were allegedly parked there. He has answered that, at that time, about 25 passengers were present at the bus stand. Then he was questioned about location of canteen and whether there was luggage of other passengers kept at platform No.1. Rest is all denial.

11. Another crucial witness of the prosecution seems to be **PW6** Shamshoddin Gulamrasul Bagwan, a fruit seller and he, in his evidence at Exh.25 has clearly stated that, he was approached by police and he joined them by carrying weighing scale. He stated about **PW5** Mr. Mahesh Sharma approaching a person sitting with a bag. That, the said person being searched and on opening the bag, green leaves having bad smell to be found therein. He specifically stated that, he was asked to weight the said material and it was weighing 4 Kg. 800 Grams, and quantity of 100 Grams was taken out for sample.

Even though he was cross-examined, no admission has been elucidated in his cross.

12. Apart from above evidence, there is evidence of **PW7** P.I. Mr. Dinkar Shinde, another police officer. He was also party to the raid and he has also reiterated what **PW5** Mr. Mahesh Sharma stated.

13. Therefore, here, oral account of police officers and that of the fruit seller, who carried out weighing of the seizure has remained intact and unshaken. Though other panchas have not supported, evidence of above three witnesses does inspire confidence.

14. As regards to the ground of non-compliance of alleged mandatory provisions, in case **Bharat Aambale** (supra), the Hon'ble Apex Court very recently has held that purpose of standing order(s)/rules in Section 52-A of the NDPS Act are meant only for guidance to the police officers, ensuring fair procedure. What prejudice has been caused due to above alleged non-compliance has not been clarified by learned counsel for the appellant. Though there is absence of gazetted officer, there is plausible explanation that, in spite of efforts, Tahsildar and medical officer could not be contacted. However, note has been taken in this regard into station diary. Therefore, it is not a case that there is no material and merely the appellant is apprehended.

15. There is no reason to disbelieve the testimonies of police officers and independent witness i.e. fruit seller. So also, there is no reason for false implication and no defence to that extent is also taken. Only ground of challenge is non-compliance of procedure. However as stated above, in view of above judgment of the Hon'ble Apex Court, even said ground has no substance. Therefore, taking overall survey of evidence and above rulings, there is no infirmity in the findings recorded by the learned trial Judge so as to interfere.

16. In view of above, the appeal stands dismissed.

[ABHAY S. WAGHWASE, J.]

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