CGHC010210822021 2026:CGHC:44512

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AJAY KUMAR DWIVEDI
cn=AJAY KUMAR DWIVEDI, ou=HIGH COURT, o=HIGH COURT OF CHHATTISGARH, st=Chhattisgarh, c=IN

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 923 of 2021

Billu S/o Gaffar Aged About 34 Years R/o Jassi Guda 217 Police Station Ghantaghar District Ghaziabad Uttar Pradesh Civil And Revenue District Ghaziabad Uttar Pradesh.

--- **Appellant.**

Versus

State Of Chhattisgarh Through Police Station Keshkal District Kondagaon Chhattisgarh.

--- **Respondent.**

With

CRA No. 1700 of 2021

Mohammad Imtiyaj S/o Abdul Rasul Aged About 30 Years R/o Jainagar Jaipur P.S. Jaipur Town, District Koraput Orissa.

---**Appellant.**

Versus

State Of Chhattisgarh Through Station House Officer, Police Station Keshkal, District Kondagaon Chhattisgarh.

--- **Respondent.**

(cause title downloaded from CIS Periphery)

For Appellants	:	Mr. Ajay Mishra and Mr. Shailendra Kumar Sharma, Advocates.
For Respondent /State	:	Mr. Ashutosh Shukla, Panel Lawyer.

(Hon'ble Shri Justice Naresh Kumar Chandravanshi)

Order on Board

13/10/2026

1. Since both the aforesaid criminal appeals arise out of the same Special Criminal Case No.25/2017 arise from Crime No. 76/2017 and registered at Police Station Keshkal, District Kondagaon (C.G.), relating to the same

incident, they are being heard and decided together by this common judgment.

2. **Criminal Appeal No. 923 of 2021** has been preferred by appellant Billu challenging the judgment of conviction and order of sentence dated **24.07.2021**. **Criminal Appeal No. 1700 of 2021** has been preferred by appellant Mohammad Imtiyaj challenging the judgment of conviction and order of sentence dated **01.10.2021.** Both judgments have been passed by the learned Special Judge (Constituted under the NDPS Act), Kondagaon, District Kondagaon (C.G.) in common case bearing Special Criminal Case (NDPS Act, 1985) No. 25/2017. By the respective impugned judgments, each of the appellants have been convicted under Section 20(B)(ii-C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "**the NDPS Act**") and sentenced to undergo Rigorous Imprisonment for 10 years and to pay a fine of Rs. 1,00,000/-, and in default of payment of fine, to further undergo rigorous imprisonment for 01 year each.

3. Prosecution case, in brief, is that on 24.06.2017, the Investigating Officer, Sharad Dubey (PW-9), posted as Inspector/Station House Officer at Police Station Keshkal, was on town patrolling duty along with police staff on their official vehicle. While patrolling on NH-30 towards Borgaon Chowk, they noticed a silver-coloured Hyundai Accent car bearing registration No. DL-02-CW-1230, going at a high speed from Jagdalpur towards Kanker. Suspecting the vehicle, the police party chased it and repeatedly attempted to stop it, but the driver accelerated the car. Ultimately, at turning No. 10 of Keshkal Ghati, the said car was intercepted. The driver of the car immediately fled into the forest and bushes. Three persons occupying the vehicle were intercepted, who disclosed their names as Ishhak, Mohammad Imtiyaj and

Billu (two of them are the appellants herein), and named the absconding driver as Taju @ Pappi, a resident of Ghaziabad. Upon interrogation, they stated that they were illegally transporting ganja purchased from Jaipur, Odisha, to Delhi. After informing the SDOP, Keshkal, the Investigating Officer summoned independent witnesses Dhandhuram Markam (PW-1) and Duwaruram Netam (PW-3), as well as the weighman Devendra Nag (PW-2). After issuing statutory notices under Section 50 of the NDPS Act and conducting preliminary searches, the intercepted vehicle was searched. From the boot of car 14 packets containing a total of 77.470 kg of contraband (ganja) were recovered and weighed on the spot. Upon inquiry under Section 91 Cr.P.C., the accused failed to produce any valid permit or documents. Subsequently, the contraband (77.470 kg ganja), 4 mobile phones and the white colour Hyundai Accent car (DL-02-CW-1230) were seized vide Ex. P-8 and alleged Ganja were kept into 3 plastic sacks and sealed vide Ex. P-9. Dehati Nalsi (Ex. P-34) and spot map (Ex. P-13), were prepared, and the accused were arrested on 24.06.2017, respectively. FIR was registered under Section 20(B) of the NDPS Act. The seized articles were deposited in the police Malkhana against acknowledgment (Ex. P-35). During investigation, inventory and sampling proceedings under Section 52A of the NDPS Act were conducted by Executive Magistrate Shekhar Patel (PW-7), where the contraband was homogeneously mixed and two samples each containing 50-gram marked as S-1 and S-2 were prepared and sealed. Sample S-1 was forwarded to FSL, Raipur, which confirmed the substance to be Ganja vide FSL report Ex. P-40.

4. After completion of investigation, a charge-sheet was submitted before the Special Court against all three accused persons, namely, Ishhak, Mohammad

Imtiyaj and Billu, on 28.11.2017. The learned trial Court framed charges against the accused persons under Section 20(B) of the NDPS Act. They abjured their guilt and claimed trial. During the course of the trial, the prosecution examined 11 witnesses and exhibited about 42 documents and marked photographs as Article A to G.

5. During the trial, appellant Mohammad Imtiyaj was lodged in District Jail, Fatehpur, and could not be produced before the Court. To avoid delay, his case was separated from that of the other accused. Subsequently, both appellants, in their respective examinations under Section 313 Cr.P.C., denied the incriminating circumstances appearing against them in the prosecution evidence and pleaded innocence. However, they did not examine any witness in defence. After evaluating the evidence on record, the Special Court first convicted and sentenced appellant Billu vide judgment dated 24.07.2021 and subsequently convicted and sentenced appellant Mohammad Imtiyaj vide judgment dated 01.10.2021 on identical terms, as mentioned in the second paragraph of this judgment. Aggrieved by the impugned judgments, both appellants have preferred these separate criminal appeals.

6. Learned counsel for the appellants would submit that the impugned judgments of conviction and orders of sentence are not sustainable in law and have been passed without proper appreciation of the evidence on record. They further submit that after seizure of the alleged contraband (ganja), 14 packets were kept in plastic bags and the seal of Police Station Keshkal was affixed vide seal panchnama (Ex. P-9), which reflects the seal as "P.S. Keshkal MP". However, the order sheet (Ex. P-22) prepared by the Executive Magistrate (PW-7) indicates the seal impression as "PS Keshakal"

only, without mentioning the State, either Madhya Pradesh (M.P.) or Chhattisgarh (C.G.). However, no clarification was elicited from either the Investigating Officer (PW-9) or the Naib Tehsildar (PW-7) during trial in this regard. They further contend that while the prosecution case alleges that the contraband was seized from a silver-coloured Hyundai Accent car bearing registration No. DL-02-CW-1230, but the order sheet (Ex. P-22) records that 77.470 kg of ganja was seized from a white colour "Swift Dezire car". He further submits that the Executive Magistrate (PW-7), who conducted the inventory proceedings, stated in his cross-examination that after homogenizing the contraband, 2 samples of 50 grams each, marked as S-1 and S-2, were prepared. However, despite removing 100 grams towards both samples, when the remaining bulk contraband was weighed, it still weighed 77.470 kg, whereas it ought to have weighed 77.370 kg. They further submit that as per the inventory proceedings (Ex. P-22 and Ex. P-23) and the deposition of the Executive Magistrate (PW-7), the seized ganja was produced before him in 3 plastic sacks, which were mixed homogeneously and 2 samples marked as S-1 and S-2 were drawn. Whereas, in a portion of the order sheet (Ex. P-22), it has been noted that 3 samples were prearped and sealed, which shows a material contradiction regarding the actual number of samples drawn. Lastly, they submit that the independent witnesses have turned hostile and have not supported the case of the prosecution. Hence, the evidence adduced by the official witnesses is not sufficient to establish the guilt of the appellants beyond reasonable doubt. In support of their submissions, they place reliance on the judgment of the Hon'ble Supreme Court in **Abdul Rajik v. State of M.P., 2026 SCC OnLine SC 1902**. On such submission, learned counsel prays that the impugned

judgments of conviction and orders of sentence be set aside and the appellants be acquitted of the charge levelled against them.

7. On the other hand, learned State counsel submits that the impugned judgments of conviction are based upon proper and meticulous appreciation of the evidence on record. The consistencies pointed out by the learned counsels of appellants in prosecution evidence are trivial in nature and are not sufficient to discard whole prosecution evidence. Hence, the impugned judgment does not call any interference of this Court.

8. I have heard learned counsel for the parties and perused the material available on record with utmost circumspection.

9. In the present case, the main questions for consideration are, *firstly*, whether the recovery of 77.470 kg of ganja from the car in which the appellants were travelling is proved; *secondly*, whether the procedure after seizure was duly followed and the chain of custody remained unbroken; and *thirdly*, whether the conviction and sentence warrant interference.

10. The Investigating Officer, Sharad Dubey (PW-9), then SHO of Police Station Keshkal, is the main witness. He deposed that he left for patrolling along with Police party on 24.06.2017 at about 13:05, after making a Roznamcha entry (Ex. P-26, certified copy Ex. P-26C). Near Borgaon Chowk, on NH-30, a silver colour Hyundai Accent car was seen proceeding at a high speed from Jagdalpur towards Kanker. The police party chased it and tried several times to stop it. It was finally stopped at turning No. 10 of Keshkal Ghati. The driver ran into the forest. However, three persons remained in the car, namely, Ishhak, Mohammad Imtiyaj and Billu.

11. PW-9 further stated about the procedure followed by him. He stated in his deposition that he called two passers-by, Dhandhuram Markam and

Duwaruram Netam, as independent witnesses, and recorded their consent (Ex. P-1 and Ex. P-16). He gave each accused a notice under Section 50 of the NDPS Act (Ex. P-27, P-28 and P-29). He searched the car and found 14 packets wrapped in newspaper and plastic in the boot/dicky of the car. He called a weighman, Devendra Nag, after verifying his scale (Ex. P-15 and Ex. P-6). The weighing panchnama is Ex. P-7, and the total weight of alleged contraband substance was found to be 77.470 kg. On being smelled it was found to be 'Ganja'. The packets were kept and sealed in 3 plastic sacks. He prepared the seizure memo (Ex. P-8) and the seal panchnama (Ex. P-9). He further deposed that he arrested the accused between 15:40 and 15:50 and prepared the spot map (Ex. P-13) and the Dehati Nalsi (Ex. P-34).

12. Constable Arvind Matlam (PW-5) was part of the patrol party. He deposed that he identified the accused in Court and supported the testimony of PW-9 regarding the chase, interception, issuance of notices, searches and recovery of 14 packets from the boot of the car. He further deposed about the opening of one packet to verify its contents, the weighing of the contraband and its sealing. He also deposed that he and PW-9 were on duty on the road towards Jagdalpur and noticed a white car coming from Jagdalpur at a high speed, which was registered in Delhi, giving them reason to be suspicious. The trial Court found their evidence to be unshaken in cross-examination.

13. The independent witnesses, Dhandhuram Markam (PW-1) and Duwaruram Netam (PW-3), and the weighman Devendra Nag (PW-2), did not support the prosecution. They were declared hostile. PW-1 and PW-3 admitted their signatures but stated that the police had taken them to the police station when they had gone there in connection with a quarrel in their locality. PW-2 denied having carried out any weighing machine and stated that the police

obtained his signatures on Ex. P-15 and Ex. P-6 when he went to report a lost SIM card. However, none of the above witnesses could explain why their signatures appear on documents describing a roadside search.

14. The testimony of a hostile witness cannot be wiped off the record. What matters here is that the 3 witnesses only stated that the proceedings did not take place in their presence. However, they did not state that the recovery was false, and nothing in their evidence contradicts the police witnesses. It is well settled law that the testimony of police officials cannot be rejected merely on the ground that they are police officers. Their evidence is required to be scrutinized like that of any other witness. The examination of independent witnesses is not an indispensable requirement in an NDPS prosecution, and merely because the independent witnesses turn hostile, the prosecution case does not necessarily fail. If the testimony of the official witnesses is found to be reliable, trustworthy and consistent, and withstands cross-examination, their evidence can form the basis of conviction. (See: **Rizwan Khan v. State of Chhattisgarh, (2020) 9 SCC 627).**

15. As regards the procedure, the record reveals that on 24.06.2017, the contraband (77.470 kg of ganja), 4 mobile phones and the Hyundai Accent car were seized vide Ex. P-8 and the contraband was sealed in three sacks vide Ex. P-9. This is proved by Sharad Dubey (PW-9) and Arvind Matlam Constable PW-5. On the same day, the sealed articles were deposited in the Malkhana of Police Station Keshkal against acknowledgment Ex. P-35, and the entry was made in the Malkhana register at serial No. 39 (Ex. P-42 and its copy Ex. P-42C), which is proved by Head Constable/In-charge Malkhana (PW-10). On 27.06.2017, the sealed sacks were taken out of the Malkhana for inventory, and the panchnama of withdrawal was prepared vide Ex. P-39.

This is supported by Police Officials, PW-9, PW-10 and PW-11. On the same day, the inventory, homogenisation and sampling were carried out by the Executive Magistrate. Two samples, S-1 and S-2, were prepared, and the proceedings were photographed. The order sheet is Ex. P-22, the inventory report is Ex. P-23, and the photographs are Articles A to G which are proved by the Executive Magistrate (PW-7). On 28.06.2017, sample S-1 was forwarded to the Forensic Science Laboratory under the memo of the Superintendent of Police (Ex. P-24). The Malkhana Moharrir (PW-10) handed it over to Constable Kachhuram Netam (PW-8) for this purpose. On 29.06.2017, PW-8 deposited S-1 at the State FSL, Raipur, and obtained the receipt Ex. P-25. On 30.06.2017, the FSL report (Ex. P-40) was issued, stating that sample S-1 was 'Ganja'.

16. Further, for the inventory, the Executive Magistrate (PW-7), was approached. PW-7 stated that the sealed sacks, bearing the Police Station Keshkal seal, were produced before him along with the case diary. He opened them and found the 14 numbered packets. A photographer and a weighman with an electronic scale, along with its certificate, were present. Each packet was weighed. The contraband was then mixed well and two samples of 50 grams each were drawn and marked S-1 and S-2. The remaining ganja was put in three sacks marked A, B and C and was weighed again. He prepared the order sheet (Ex. P-22) and the inventory certificate (Ex. P-23). The photographs (Articles A to G) bear his signature. Hence, the record clearly shows that the procedure under Section 52A of the NDPS Act was also followed appropriately. The contraband was inventoried, sampled and certified in the presence of the Magistrate.

17. Thus, from above it is apparent that all the necessary procedures have been followed and the chain of custody of alleged contraband substance is found to be fair, reliable and unblemished, right from its seizure to deposit of sample in FSL. As the seizure was made on 24.06.2017, the articles were deposited in the Malkhana on the same day, inventory proceeding was conducted on 27.06.2017, the samples were dispatched on 28.06.2017, deposited in the FSL on 29.06.2017 and the FSL report was issued on 30.06.2017, thus there is no unnecessary delay or unexplained gap from seizure of alleged contraband to depositing it in the FSL.

18. Investigating Officer, Sharad Dubey (PW-9), Constable Arvind Matlam (PW-5), Harishchand Netam, Malkhana Muharrir (PW-10) and Executive Magistrate, Shekhar Patel (PW-7) and Thansingh Chandravanshi, Head Constable (PW-11) are the material witnesses examined by the prosecution. They have denied all the negative suggestions taken by the defense counsel. Nothing has been elicited in their cross-examination to disbelieve their statement, made in examination-in-chief.

19. The appellants relied in the case of *Abdul Rajik (Supra)*. That case is distinguishable on facts. There, no attempt was made to draw samples before a Magistrate and the sample packets carried no identifying marks. Here, the samples were drawn before an Executive Magistrate with a certified inventory and photographs, every movement is documented, the carrier (PW-8) was examined, and the FSL found the seal on the sample to be matching. The said decision, therefore, does not help the appellants.

20. As regards the infirmities pointed out by learned counsel for the appellants, i.e., that the seal in Ex. P-9 reads "P.S. Keshkal MP", while Ex. P-22 shows only "PS Keshakal" without mentioning the State; that Ex. P-22 describes the

car as a "Swift" instead of a Hyundai Accent; and that the weight of 77.470 kg of Ganja is mentioned instead of 77.370 kg in inventory proceeding, the same may now be considered.

21. As regards seal, there is only one Police Station Keshkal in the district, and the omission of the State's name is not, by itself, a sign of tampering. PW-7 explained that the police station seal was used because the Court's seal was not available. The FSL, an independent body, found the seal on S-1 to be matching with the specimen seal of Police Station Keshkal. No suggestion was put to PW-7 or PW-9 in the cross-examination regarding the difference of seals or tampering of the plastic sacks/packets. As regards the car, the recovery from the silver colour Hyundai Accent car, bearing registration No. DL-02-CW-1230, is proved by PW-9, PW-5 and the seizure memo (Ex. P-8). The inventory proceeding concerned the contraband and not the vehicle, therefore, the wrong description in the order sheet of inventory proceeding appears to be only a clerical error. The contention raised by learned counsel for the appellants that despite preparing 2 samples each containing 50 grams mentioning total weight of alleged contraband to be 77.470 Kg is also not found to be material, specially when it has been proved by the prosecution that while preparing inventory 2 samples marked as S-1 and S-2 were drawn, therefore, not reducing 100 grams of two samples in total weight of alleged Ganja and mentioning 3 samples instead of 2 and difference of make of Car mentioned in the order-sheet of inventory proceeding are not found to be so grave to wipe out all positive evidence of the prosecution. Such minor infirmities cannot be given undue weightage. Minor omissions/typographical errors in documents, made in the ordinary course of work do not destroy a prosecution case which is otherwise proved

by consistent oral evidence, supported by documents and an unbroken chain of custody.

22. The appellants were travelling in the same car, in which the ganja was found which was kept in 14 packets wrapped in newspaper and plastic. This shows that they were in conscious possession of the contraband. Their conduct on seeing the police, speeding the car and the driver fled from the spot, also supports the same conclusion. The appellants did not give any plausible explanation regarding their possession. Thus, the prosecution has proved its case beyond reasonable doubt.

23. Consequently, this Court is of the considered view that the learned trial Court committed no error in convicting the appellants for the offence punishable under Section 20(b)(ii)(C) of the NDPS Act. As the minimum sentence prescribed under the said provision is rigorous imprisonment for 10 years and a fine of Rs.1,00,000/-, and the learned trial Court has already imposed the minimum sentence, there is no scope for any further reduction in the sentence.

24. Accordingly, both the appeals are **dismissed**. The judgments of conviction and orders of sentence dated 24.07.2021 and 01.10.2021 passed against accused Billu/Mohammad Imtiyaj, respectively, are affirmed. Consequences to follow in accordance with law.

25. A copy of this judgment, along with the record, be sent to the trial Court for information and necessary action, if any.

26. Pending application(s), if any, also stands disposed of.

Sd/-

(Naresh Kumar Chandravanshi)
Judge

Ajay