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HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 541 of 2018

1 - Krishni Bai W/o Late Poonam Sahu Aged About 52 Years R/o- Bus Stand, Utai, Post Utai, District- Durg, Chhattisgarh., District : Durg, Chhattisgarh

... Appellant(s)

versus

1 - State Of Chhattisgarh Through- Station House Officer, Police Station Utai, District- Durg, Chhattisgarh., District : Durg, Chhattisgarh

... Respondent(s)

For Appellant(s)	:	Shri Shresht Gupta, Advocate
For Respondent/State	:	Shri Suresh Tandon, PL

(Hon'ble Shri Justice Arvind Kumar Verma)

Judgment on Board

23/03/2026

When the matter was called out today, none appeared on behalf of the appellant. In the circumstances, this Court deems it appropriate to proceed with the hearing of the appeal by appointing a counsel through the High Court Legal Services Committee.



2. Accordingly, Shri Shresht Gupta, empanelled Legal Aid Counsel, is appointed to represent the appellant and to argue the appeal on his behalf. The Secretary, High Court Legal Services Committee, is directed to issue the requisite authorization letter in his favour.

3. The present criminal appeal has been preferred against the judgment of conviction and order of sentence dated 24.03.2018 passed by the learned Special Judge (N.D.P.S. Act), Durg (C.G.) in Special Sessions Trial No. 29/2016, whereby the appellant has been held guilty for the offence punishable under Section 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

4. By the said impugned judgment, the learned trial Court, upon appreciation of the oral and documentary evidence adduced by the prosecution, recorded a finding that the appellant was found in conscious and illegal possession of 1.100 kilograms of contraband "Ganja" without any lawful authority or permit. Consequently, the appellant was convicted for the aforesaid offence and was sentenced to undergo rigorous imprisonment for a period of one year along with a fine of ₹1,000/-, and in default of payment of fine, to further undergo additional rigorous imprisonment for one month.

5. Being aggrieved by the aforesaid judgment of conviction and order of sentence, the appellant has preferred the present appeal assailing the legality, correctness and propriety of the impugned judgment.



6. The prosecution case, in brief yet comprehensively, is that on 03.09.2016, the Investigating Officer, Sub-Inspector Vishwajit Singh (P.W.-8), while posted at Police Station Utai, District Durg (C.G.), received a secret information at about 15:10 hours from the informer that the present appellant, Krishni Bai, was engaged in the illegal possession and sale of contraband substance, namely "Ganja", near the Bus Stand, Utai, from her Pan Thela. Upon receipt of the said information, the Investigating Officer, in compliance with the mandatory provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985, recorded the information in the daily diary (Roznamcha) and proceeded to take necessary steps for conducting a lawful search and seizure. He prepared the requisite intimation and informed the superior authorities as per procedure. Thereafter, he constituted a raiding party comprising police personnel and independent witnesses and proceeded to the indicated spot along with necessary investigation materials.

7. At the instance of the informer, the raiding party reached the place of occurrence, i.e., near Bus Stand, Utai, where the appellant was found present at her Pan Thela. The Investigating Officer served notice to the appellant apprising her of her legal rights under the provisions of the NDPS Act and conducted a search in accordance with law. During search, the Investigating Officer recovered a plastic bag from the possession of the appellant containing a green leafy substance suspected to be "Ganja". Upon preliminary examination by way of smell, burning, and visual inspection, the substance was found



to be prima facie Ganja based on the experience of the Investigating Officer. Thereafter, the Investigating Officer called weighman, namely Naval Kishor (P.W.-4), who, after due procedure, weighed the recovered contraband and found it to be 1.100 kilograms. The entire contraband was duly weighed in the presence of witnesses, and two representative samples of 100 grams each were drawn from the seized substance. The samples as well as the remaining contraband were separately packed, sealed and marked in accordance with prescribed procedure to maintain the sanctity of the evidence.

8. Subsequently, seizure proceedings were conducted, and a seizure memo was prepared on the spot in the presence of witnesses. The appellant was unable to produce any valid license or permit for possession of the said contraband substance. Thereafter, the Investigating Officer served a notice under Section 91 of the Code of Criminal Procedure upon the appellant requiring her to produce documents relating to lawful possession or trade of the contraband, but the appellant failed to furnish any such documents. Following completion of the spot proceedings, the Investigating Officer registered a Dehati Nalishi, on the basis of which FIR No. 234/2016 was formally registered at Police Station Utai for the offence punishable under Section 20(b)(ii)(B) of the NDPS Act, 1985.

9. The seized contraband and samples were thereafter deposited in the Malkhana of the Police Station, ensuring proper chain of custody. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. After completion of all necessary formalities and



upon finding sufficient material against the appellant, the Investigating Officer filed a charge-sheet before the competent Court.

10. The learned trial Court, upon consideration of the material on record, framed charges against the appellant under the aforesaid provisions of the NDPS Act. The prosecution, in order to substantiate its case, examined eight witnesses, including the Investigating Officer, seizure witnesses, and other formal witnesses, and exhibited relevant documents pertaining to search, seizure, and investigation. Thus, the appellant was found in conscious possession of 1.100 kg of Ganja without any lawful authority or permit, thereby committing an offence punishable under Section 20(b)(ii)(B) of the NDPS Act, 1985.

11. The learned trial Court framed charges accordingly. In order to bring home the guilt of the accused persons, the prosecution examined 08 witnesses, including the investigating officer, seizure witnesses, and other formal witnesses. Documentary evidence such as seizure memo, FSL report, and relevant case diary entries were also exhibited. On examination under Section 313 Cr.P.C. the accused denied the charges, claiming false implication in the case.

12. The learned trial Court, upon appreciation of evidence, convicted and sentenced the appellants as stated above.

13. Counsel for the appellant assailed the impugned judgment on multiple grounds and submitted as under:

i) That the entire prosecution case suffers from serious procedural irregularities and non-compliance of the mandatory provisions of



Sections 42, 50, 55 and 57 of the NDPS Act, thereby vitiating the trial. Reliance is placed on **State of Punjab v. Baldev Singh**, wherein it has been held that compliance of Section 50 is mandatory and non-compliance vitiates conviction. It is further argued that the search and seizure are doubtful, and independent witnesses have not supported the case. Reliance is also placed on **Karnail Singh v. State of Haryana**, wherein the Supreme Court emphasized strict compliance of Section 42.

ii) It is submitted that the prosecution has failed to prove conscious possession beyond reasonable doubt. Without prejudice, reliance is placed on **Rafiq Qureshi v. Narcotic Control Bureau** to submit that sentence can be reduced considering mitigating circumstances

ii) That the independent witnesses, namely seizure witness and weighman, have not supported the prosecution case and have turned hostile, which strikes at the very root of the prosecution story.

iii) That there exist material contradictions and omissions in the statements of prosecution witnesses recorded under Sections 161 and 164 Cr.P.C., rendering the prosecution version unreliable.

iv) That the alleged seizure is not proved beyond reasonable doubt, and the conviction is based solely on the testimony of police officials, which requires strict scrutiny.

14. Without prejudice, it is further submitted that the appellant is an elderly lady, earning her livelihood by running a small *Paan* Stall, and has already remained in custody for about 35 days during trial and thereafter. It is thus prayed that the appellant deserves acquittal; in the alternative, a lenient view on sentence may be taken.



15. Per contra, learned State counsel supported the impugned judgment and submitted:

- i) That the prosecution has duly proved the seizure of 1.100 kg of Ganja from the conscious possession of the appellant.
- ii) That the evidence of the Investigating Officer and other official witnesses is consistent, reliable, and trustworthy, and merely because independent witnesses have not supported the prosecution, the case does not fail. That testimony of official witnesses is reliable and can form basis of conviction. Reliance is placed on ***State (Govt. of NCT of Delhi) v. Sunil***, wherein it has been held that police witnesses are as reliable as any other witness. Therefore the conviction is well-founded and requires no interference.
- iii) That minor discrepancies do not affect the core of the prosecution case. It is submitted that the learned trial Court has rightly appreciated the evidence and recorded conviction, which calls for no interference.

16. Heard counsel for the parties and their rival submissions and perused the records.

The following points arise for consideration:

- i) Whether the prosecution has been able to prove beyond reasonable doubt that the appellant was in conscious possession of contraband “Ganja”?
- ii) Whether the conviction recorded by the trial Court is sustainable in law?
- lii) Whether the sentence imposed requires interference?



Upon careful perusal of the entire evidence on record, this Court finds:

17. The seizure of contraband has been proved through the testimony of the Investigating Officer (P.W. 8) and supporting police witnesses. Though the independent witnesses have not supported the prosecution, it is a settled position of law that testimony of official witnesses cannot be discarded solely on that ground, if otherwise reliable. The law regarding Section 42 has been settled in ***Karnail Singh v. State of Haryana (2009) 8 SCC 539***, wherein it has been held that “Delayed compliance with satisfactory explanation would not vitiate the trial.”

18. In the present case, the Investigating Officer has recorded the information and proceeded accordingly. Even if there is some procedural deviation, the same stands substantially explained and does not vitiate the proceedings. The protection under Section 50 applies only in case of personal search. In the present case, the recovery was made from a bag kept at the Paan Stall and not from the personal search of the appellant. Hence, Section 50 is not attracted. The contention that only police witnesses have supported the prosecution is not sufficient to discard their testimony. It is an archaic notion that actions of police officers should be approached with initial distrust.”

19. Thus, the testimony of the Investigating Officer, being cogent and trustworthy, can safely be relied upon. It is well settled that non-support by independent witnesses does not demolish the prosecution case.



The recovery of 1.100 kg of Ganja from the possession of the appellant stands duly proved. The appellant has failed to offer any plausible explanation.

20. In light of the above discussion, this Court is of the considered view that the prosecution has proved its case beyond reasonable doubt. The findings recorded by the trial Court are well-reasoned and legally sustainable. Accordingly, the conviction of the appellant under Section 20(b)(ii)(B) of the NDPS Act is affirmed.

21. So far as the sentence part is concerned, the quantity involved is less than commercial quantity; the appellant is a 52-year-old woman of modest means; she has already undergone about 35 days of incarceration; there are no criminal antecedents and thus, considering the totality of circumstances, this Court is of the considered opinion that if the sentence imposed upon her is modified and reduced to the period already undergone by her. Accordingly, the appeal is allowed in part.

22. The conviction of the appellant under Section 20(b)(ii)(B) of the NDPS Act is maintained. The sentence of one year rigorous imprisonment is reduced to the period already undergone (about 35 days). The fine of ₹1,000/- is maintained.

23. The appellant shall be entitled to set off the period of actual custody undergone during investigation, trial and appeal as per section 428 of the BNSS Act, 2023. The appeal is partly allowed to the extent indicated above. The appellant is reported to be on bail. She need not



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surrender, in view of modification of sentence to the period already undergone, subject to payment of fine, if not already deposited.

Sd/-
(Arvind Kumar Verma)
Judge