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HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 756 of 2016

Nandu Prasad Patel S/o Roshan Prasad Patel Aged About 31 Years
R/o Village Siktakhurd, Post Ojhabarwa, Police Station Shanichari,
District Betiya, West Champaran, Bihar. Note Chhattisgarh Wrongly
Mentioned In The Impugned Order., Bihar

... Appellant

versus

State Of Chhattisgarh Through G.R.P. Dongargarh, District
Rajnandgaon, Chhattisgarh.

---- Respondent

For Appellant : Mr. Rajendra Patel, Advocate on
behalf of Mr. Rajendra Tripathi, Advocate
For State/Respondent : Mr. Vivek Mishra, P.L.

Hon'ble Shri Justice Arvind Kumar Verma

Judgment on Board

17/03/2026

1. This criminal appeal has been preferred by the appellant under Section 374(2) of CrPC being aggrieved with the judgment of conviction and order of sentence dated 19.05.2016 passed in



Special Case No.03/2015 by the Special Judge (NDPS Act), Rajnandgaon (C.G.), whereby the trial Court has convicted the appellant as under :

Conviction	Sentence	In Default
Under Section 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985	R.I. for 05 years and fine amount of Rs.20,000/-	In default of payment of fine amount further R.I. for 01 year

2. According to the case of prosecution, on 11.01.2015, a secret information was received by the G.R.P, Dongargarh that a person was suspected of carrying a bag containing cannabis for selling in platform no. 1 of Dongargarh Railway Station who was waiting for someone. On further inquiry, the bag seized from the appellant was said to contain 2kg cannabis. Thereafter, the G.R.P, Dongargarh has given him notice under Section 50 of the NDPS Act and obtained permission for search before the witnesses.
3. After due procedure, the appellant was arrested, and offence was registered against the accused and after due investigation charge sheet was filed against the accused/appellant.



4. So as to hold the accused/appellant guilty, the prosecution has examined as many as 12 witnesses and exhibited 44 documents. The statement of the accused/appellant was also recorded under Section 313 of the Cr.P.C. in which he denied the circumstances appearing against him and pleaded innocence and false implication in the case.
5. After hearing the parties, vide impugned judgment of conviction and order of sentence dated 19.05.2016, learned Special Judge has convicted and sentenced the appellant as mentioned in para-1 of this judgment. Hence, the present appeal.
6. Learned counsel appearing on behalf of the appellant contended that he does not want to press this appeal on merits and confines his argument to the sentence part only. He further submits that the incident is of the year 2015 and he is facing */is* since 2015. Appellant has undergone about 01 year and 09 months, therefore, it is prayed that the jail sentence awarded to the appellant may be reduced to the period already undergone by him.
7. Per contra, learned counsel for the State/respondent opposes the argument raised by counsel for the appellant,



supported the impugned judgment and submits that sentence awarded by the trial Court is just and proper and requires no interference.

8. I have heard learned counsel appearing on behalf of the parties and perused the material available on record with utmost circumspection.
9. On perusal of the records, I have found that on 11.01.2015, a secret information was received by the G.R.P, Dongargarh that a person was suspected of carrying a bag containing cannabis for selling in platform no. 1 of Dongargarh Railway Station who was waiting for someone. On further inquiry, the bag seized from the appellant was said to contain 2kg cannabis. Thereafter, the G.R.P., Dongargarh has given him notice under Section 50 of the NDPS Act and obtained permission for search before the witnesses.
10. Under Section 42 of the NDPS Act, 1985 prescribed for power of entry, search, seizure and arrest without warrant or authorization.
11. The next issue that falls for our consideration is with respect to the compliance of Section 42 of the NDPS Act 1985. For the said purposes, an analysis of the bare text of Section 42



of the NDPS Act 1985 is undertaken hereinafter. Section 42 of the NDPS Act 1985 is worded as follows:

“42. Power of entry, search, seizure and arrest without warrant or authorisation.—

(l) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally



acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,—

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

[Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or



controlled substances granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector:

Provided further that] if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.”

12. On perusal of the record, it transpires that the Investigating Officer has complied with provision of Sections 42, 52-A (3) & 55 of the NDPS Act.
13. The Report of Regional Forensic Science Laboratory, which shows that the samples of seized articles have been found positive. Therefore, in considered opinion of this Court, the trial Court has rightly convicted the appellant for the offence



punishable under Section 20(b)(ii)(B) of the NDPS Act. I do not find any illegality and infirmity in the findings recorded by the trial Court with regard to the conviction part.

14. Considering the above facts and circumstances of the case, particularly, considering the fact that the contraband Ganja seized from the possession of the appellant is 02 Kg in total; he has already undergone about 01 year and 09 months out of the period of 05 years sentence imposed upon him by the trial Court, I am of the considered opinion that the ends of justice would be met if, while upholding the conviction imposed upon the appellant, the jail sentence awarded to him is reduced to the period already undergone by him. If the fine amount is not deposited by the appellant, he shall further undergo as has been ordered by the learned trial Court. Ordered accordingly.
15. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Kumar Verma)
Judge