

HIGH COURT OF MADHYA PRADESH JABALPUR

Criminal Appeal No.2315/2007

Abid @ Kanta

Vs.

State of Madhya Pradesh

Present : Hon'ble Shri Justice N.K. Gupta.

Name of counsel for the parties:

Shri Saleem Ahmad, Advocate for the appellant.

*Shri B.P. Pandey, Dy. Government Advocate for the
respondent/State.*

J U D G M E N T
(25.11.2010)

The appellant has preferred this appeal against the judgment dated 26.10.2007 in Special Criminal Case No.43/06 passed by the Special Judge (N.D.P.S.), Jabalpur by which he was convicted for the offence punishable under Section 8/20(B)(II) Sub-clause B of N.D.P.S. Act and sentenced to R.I. for one year with fine of Rs.1,000/- in default of payment of fine amount, an additional R.I. for two months.

2. The prosecution case in short is that on 5.9.2006 A.S.I. Shri M.K. Verma of Police Station Hanumantal, Jabalpur was informed that the appellant is transporting

some *Ganja*. Since there was no sufficient time available, he mentioned the reasons in the Rojnamcha. He intimated the concerned C.S.P. and then left the police station for proceedings of raid. At the spot, he found that the appellant was coming with a bag. The appellant was detained and informed that he could get his search before the Magistrate or any Gazetted Officer, thereafter with the consent of the accused/appellant, the search was taken. In search, 1 kg 250 gms *Ganja* was found in the bag kept by the appellant. Two samples were taken from the seized articles and entire *Ganja* was also sealed. After due investigation, a challan was filed before the Special Court (N.D.P.S), Jabalpur for the offence punishable under Section 8/20 of N.D.P.S. Act.

3. The appellant abjured his guilt. He took the defence that he was falsely implicated in the case by the police. He examined one Guddi Bai (DW-1) as defence witness.

4. On considering the prosecution evidence, learned Special Judge, Jabalpur found the appellant guilty for the offence punishable under Section 8/20(B)(II) Sub-clause B of N.D.P.S. Act and inflicted with the aforesaid sentence.

5. I have heard learned counsel for both the parties.

6. Learned counsel for the appellant has submitted that as per provision of Section 20 of N.D.P.S. Act, only six

months imprisonment is prescribed for a small quantity of *Ganja*, which could be of 1 kg. The quantity seized from the appellant is slightly more than 1 kg. He was inflicted with one year R.I. and the appellant remained in custody for 2 months and 26 days during the trial and then he was taken into custody on 26.10.2007 after pronouncement of the judgment and he could be enlarged on bail on 18.3.2008, therefore, he remained in custody for eight months in all. Learned counsel for the appellant further submits that looking to the quantity of *Ganja*, eight months custody seems to be sufficient. Therefore, the appellant prays to reduce the sentence. He further submits that the appellant is not challenging the conviction.

7. It is true that *Ganja* seized from the possession of the applicant was 250 gms more than small quantity, whereas maximum sentence for the small quantity of *Ganja* is six months R.I. and, therefore, looking to the quantity of seized articles from the appellant, it appears that eight months custody is sufficient. The appellant was a young youth of 20 years of age at the time of incident. There is no criminal past shown against the appellant, therefore, looking to the entire circumstances, it would be proper to reduce the jail sentence of the appellant to the period which he has

already undergone in the custody. His appeal seems to be accepted partly.

8. On the basis of aforesaid discussion, the appeal of the appellant is hereby partly allowed. Conviction for the offence punishable under Section 8/20(B)(II) Sub-clause B of N.D.P.S. Act is hereby maintained, but the jail sentence of the appellant is hereby reduced to the period for which he has already undergone in the custody. No change in the fine amount.

9. The appellant is in custody and, therefore, a appropriate warrant be issued so that he may be released forthwith.

(N.K. GUPTA)
JUDGE
25.11.2010