



2024:CGHC:28324

NAFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**Criminal Appeal No. 1062 of 2003**

- Abdul Jalil @ Bablu S/o. Mahbub Khan, aged about 32 years, R/o. Gauri Nagar, Near Railway Crossing Rajnandgaon, District- Rajnandgaon (C.G.)

**---- Applicant/Appellant**

**Versus**

- State of Chhattisgarh

**----Respondent**

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For Appellant	:	Mrs. Usha Chandrakar, Advocate.
For State	:	Mr. Sanjeev Pandey, Dy. A.G.

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**Hon'ble Smt. Justice Rajani Dubey**  
**Order on Board**

**31.07.2024**

- This appeal arises out of the judgment of conviction and order of sentence dated 17.09.2003 passed by the Special Judge, (NDPS Act, 1985) Rajnandgaon, District- Rajnandgaon (C.G.) in NDPS Special Case No. 44/2003, convicting the accused/appellant under Section 20(b)(i) of the Narcotic Drugs and Psychotropic Substances Act ( in short " the Act") and sentencing him to undergo R.I. for 10 years and to pay a fine of Rs. 50,000/-, in default whereof to suffer additional R.I. for 02 years.
- Facts of the case, in brief are that on 01.03.2003, Sub-Inspector T. Khakha (PW-06) was posted at Police Station Kotwali, Rajnandgaon (C.G.). On that date, he received secret information from the informant that the appellant had kept contraband article ganja in a white plastic bag near railway crossing on his black colour Boxer motorcycle bearing Registration No. CG-08-A-3029. Upon receiving of this secret

information, he recorded the secret information vide Ex. P/16 and transmitted the same to the City Superintendent of Police and thereafter, proceeded to the spot, i.e., near railway crossing. The appellant was found there with a Boxer motorcycle bearing Registration No. CG-08-A-3029 on which, the appellant kept a white plastic bag. Notice under Section 50 of the Act was given to the appellant, on which he consented in written for searching of plastic bag which was on his bike be conducted, in presence of witnesses by Sub-Inspector T. Khakha (PW-06) and accordingly panchnama vide Ex. P/2 was prepared and the accused/appellant had corporated with the search, which was being conducted by the police personnel. However, on such search being made, nothing objectionable was found from the plastic bag from the possession of appellant which was on his motorcycle bearing Registration No. CG-08-A-3029. While searching of the trunk of the said motorcycle, a white plastic bag containing substance like Ganja was found for selling purpose from the possession of the appellant, panchanama of the same was prepared vide Ex. P/3. On the spot itself the contraband article Ganja was got examined by the witnesses by way of smelling and tasting and on the basis of their experience, they found it to be Ganja. Thereafter, contraband article Ganja when weighed alone found to be 08.100 KG and when weighed with plastic bag found to be 08.300 KG, from which, samples were separated from it and panchnama of the same was prepared vide Ex. P/7. The samples and the remaining ganja were duly sealed. Thereafter, Sub-Inspector T. Khakha (PW-06) recorded Dehati Nalishi vide Ex. P/15. Sub-Inspector T.Khakha (PW-06) came back to Police Station- Kotwali, Rajnandgaon along with the appellant and seized articles and on the basis of Ex. P/15, the F.I.R. was registered against the appellant vide Ex. P/14. The seized Ganja and its samples were kept in Malkhana for safe custody. Spot map was prepared by Sub-Inspector T.S. Khakha (PW-06) vide Ex. P/9. Statements of the witnesses were recorded. The samples of seized ganja (Ex. P/11) were sent to FSL for chemical examination and a report (Ex.P/12) was received therefrom, which confirmed the contraband to be ganja and thereafter a challan was filed against the appellant under Section 20 of N.D.P.S. Act.

3. So as to hold the accused/appellant guilty, the prosecution examined as

many as 07 witnesses in all. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied all the incriminating circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

4. The Trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment has convicted the accused/appellant as mentioned in para 01 of this judgment. Hence, this appeal filed by the appellant.
5. Learned counsel for the appellant submits that the learned Trial Court has convicted the appellant without proper appreciating the evidence of the witnesses. The learned Trial Court has erred in holding the appellant's guilty for an offence under Section 20 (b) (i) of NDPS Act and the independent witnesses namely Ramesh Verma (PW-02) and Parasram (PW-03) have not supported the prosecution case before the Trial Court. Statement of the Investigating Officer T.S. Khakha. (PW-06), is also full of contradictions and omissions. He further submits that Investigating Officer, T.S. Khakha (PW-06) has not seized any documents regarding the ownership of Boxer motorcycle bearing Registration No. CG-08-A-3029 and the prosecution has failed to prove this fact that the appellant was owner of the said motorcycle, from where contraband was seized, PW-06 has also admitted this fact in cross-examination that he did not produce any ownership documents regarding the motorcycle and also regarding the house, in which the motorcycle was recovered. The Investigating Officer, T.S. Khakha (PW-06) does not comply with the mandatory provisions of N.D.P.S. Act and the prosecution has utterly failed to prove its case beyond all reasonable doubt, therefore, the impugned judgment of conviction and order of sentence is liable to be set aside.
6. Reliance has been placed on the decision of Hon'ble Apex Court in the matter of **Sanjeet Kumar Singh @ Munna Kumar Singh Vs. State of Chhattisgarh**, reported in 2022 LiveLaw (SC)724.
7. *Per contra*, learned counsel for the State supported the impugned judgment of conviction and order of sentence and submits that the prosecution has proved its case beyond all reasonable doubt and the

learned Trial Court has rightly convicted the appellant. Therefore, the appeal is liable to be dismissed.

8. I have heard learned counsel for the parties and perused the material available on record including the impugned judgment.
9. It is clear from record of learned Trial Court that prosecution has examined as many as 07 witnesses to prove its case against the appellant. Ramesh Verma (PW-02) and Parasram (PW-03) are search and seizure witnesses of contraband article ganja and they admitted their signature on Ex.P/1 to Ex. P/7, but they denied of any seizure taking place before them and when prosecution declared them hostile and cross-examined them, they denied all the suggestions of the prosecution.
10. T.S. Khakha (PW-06), who is the Investigating Officer has stated in para 11 and 12 of his cross-examination that he did not seize any document regarding the ownership of motorcycle bearing Registration No. CG-08-A-3029 and did not seize any document regarding the ownership of the house, from where the said motorcycle was seized. In Paragraph 12, he stated that the appellant lived in the said house, which is why he stated that the said house was owned by the appellant.
11. Babulal Sinha (PW-04), who is the Head Constable stated in his deposition that Ex. P/11 is the Malkhana Register and he deposited contraband article ganja in Malkhana for safe custody. Sonchand Thahriya (PW-05), who is the constable stated in his deposition that he carried the sample of contraband article ganja to FSL, Raipur for chemical analysis and the report of said contraband was produced before the police Station, which is Ex. P/12 and its acknowledgment is Ex.P/13.
12. It has been held by Hon'ble the Apex Court in the matter of **Sanjeet Kumar Singh @ Munna Kumar Singh Vs. State of Chhattisgarh** reported in 2020 LiveLaw (SC) 724 in para 31 & 32 which reads as under:-

**“31. Therefore, it is clear that the I.O. examined as PW-07 claims to have done everything only in the presence of independent witnesses. But those independent witnesses not merely denied their presence and participation but also came up with an explanation as to how their signatures found a place in those documents.”**

**32. In such Circumstances, a serious doubt is cast on the very search and seizure allegedly made by PW-07. But unfortunately, both the Special Court and the High Court went by the law in theory, without applying the same to the facts of the case.”**

13. In the light of above judgment, in this case also independent witnesses have not supported the prosecution case before the learned Trial Court and also the prosecution did not file any documents regarding the ownership of the said motorcycle and regarding the said house, from where the motorcycle was stood and from which the contraband was seized and the prosecution has also failed to prove this fact that the said motorcycle and the said house belongs to the appellant. As per Ex. P/13, memo of S.P., Rajnandgaon dated 03.03.2003, property was sent to FSL, Raipur and deposited by Sonchand Thahariya (PW-05) on 05.03.2003 at FSL, Raipur. The prosecution has failed to prove this fact that property was deposited by Sonchand Thahariya (PW-05) was without delay. In these circumstances, the prosecution has completely failed to prove the complicity of the accused/appellant in the crime in question beyond all reasonable doubt.
14. In view of the aforesaid discussion and considering the facts and circumstances of the case, this appeal is **allowed**. The impugned judgment is set aside and the accused/appellant is acquitted of the charge under Section 20(b) (i) of NDPS Act, 1985.
15. The appellant is reported to be on bail, therefore, his bail bond shall remain in operation for a period of six months from today in view of provision of Section 437-A of Cr.P.C.
16. The Trial court record along with a copy of this judgment be sent back immediately to the trial court concerned for compliance and necessary action.

Sd/-  
(Rajani Dubey)

JUDGE