

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE GAJENDRA SINGH

CRIMINAL APPEAL No. 947 of 2007

BETWEEN:-

**PRAHLAD NAMDEO S/O JAGDISH
NAMDEV, AGED ABOUT 22 YEARS,
VILLAGE DARJIYAN MOHALLA
CHURHAT P.S. CHURHAT, DISTRICT
SIDHI (MADHYA PRADESH)**

.....APPELLANT

(SHRI VINOD TIWARI – AMICUS CURIAE)

AND

**THE STATE OF MADHYA PRADESH
THROUGH P.S. CHURHAT DISTRICT
SIDHI (MADHYA PRADESH)**

.....RESPONDENT

**(SHRI ASHOK SINHA – GOVERNMENT ADVOCATE FOR THE
STATE)**

Reserved on : 03/01/2024

Pronounced on : 25/01/2024

*This Criminal Appeal having been heard and reserved for order,
coming on for pronouncement on this day, **Justice Gajendra Singh**
pronounced the following:*

JUDGMENT

This Criminal Appeal has been filed under Section 374(2) of the Cr.P.C. being aggrieved by judgment dated 11.04.2005 passed by Special Judge, Narcotic Drugs and Psychotropic Substances Act, 1985 Sidhi in Special Case No.149/2006 whereby the appellant-accused has been convicted under Section 20(b)(ii)(B) of NDPS Act, 1985 and sentenced to undergo R.I. for 1 year with the fine of Rs.2,000/- with default stipulation.

2. The case of the prosecution in brief is that on 04.04.2006 Uma Shankar Singh (PW-7) then Inspector of Police Station Churhat District Sidhi received an information about appellant-accused Prahlad Namdeo carrying contraband Ganja illegally in a polythene. Uma Shankar prepared the Panchnama (Ex.P-1) of the information before witness Awadhlal (PW-1) and Rajendra Prasad Kewat (PW-2) and intimated through Police Constable Jaichandra Singh (PW-5) to SDOP, Churhat vide letter Ex.P-16. SDOP Churhat was on official tour and could not be available. A Panchnama Ex.P-2 was prepared and rushed to village Sarra near Dalda factory. Appellant-accused was present at that place. Appellant-accused was served a notice (Ex.P-3) and informed that he has a right to be searched before Gazetted Officer or Magistrate. Appellant-accused conveyed his consent for search by Police Inspector Uma Shankar Singh. A Panchnama (Ex.P-4) was prepared and Panchnama (Ex.P-5) was regarding the search of Uma Shankar Singh and Associate Police Force thereafter search of appellant-accused was made and contraband of Ganja was found in a polythene of yellow color from the appellant-accused. Panchnama

(Ex.P-6) was prepared. The contraband of Ganja was identified by smelling, burning and testing by fire. Panchnama (Ex.P-7) was prepared and thereafter weight of contraband was found to be 1250 gram and two packets of 25-25 gram were separated for examination. Panchnama (Ex.P-8) was prepared. Rest of the contraband of Ganja was sealed and seizure memo and seizure Panchnama (Ex.P-9) was prepared.

3. Appellant-accused was arrested and brought to Police Station Churhat. Seized contraband of Ganja was handed over to Head Constable Dadda Singh (PW-6). Panchnama (Ex.P-11) was prepared and one part of the sample was sent to State Forensic Science Laboratory, Sagar with a letter (Ex.P-17) of Superintendent of Police, Sidhi through Police Constable Jaichandra Singh. State Forensic Science Laboratory, Sagar reported the sample to be Ganja through report (Ex.P-31). F.I.R. (Ex.P-28) was recorded by Police Inspector Uma Shankar Singh and crime No.76/2006 was registered. Detailed reports are Ex.P-29 and P-30 which were forwarded to Police Superintendent of Police, Sidhi. Completing the formalities of investigation, a charge sheet was forwarded to Special Judge, NDPS Act, 1985, Sidhi.

4. Appellant-accused abjured guilt advancing the defence that he has a dispute with a person belonging to Kol caste and appellant-accused has been falsely implicated at the instance of that person. His signatures were taken falsely on the Panchnamas in Police Station.

5. Prosecution examined Awadhlal (PW-1), Rajendra Prasad Kewat (PW-2), Police Constable Angad Prasad Shukla (PW-3), Police

Constable Ramji Mishra (PW-4), Police Constable Jaichandra (PW-5), Head Constable Dadda Singh (PW-6), Police Inspector Uma Shankar Singh (PW-7). Prosecution had also adduced and exhibited documents Ex.P-1 to P-33.

6. Appreciating the evidence, Trial Court convicted the appellant-accused under Section 20(b)(ii)(B) of NDPS Act, 1985 and sentenced as mentioned in para-1 of the impugned judgment.

7. Challenging the conviction and sentence, this appeal has been preferred on the ground that manner of investigations creates doubts on the credibility of the prosecution and Trial Court ignored this basic facts. Witnesses of seizure memo have not supported the version of prosecution. Necessary ingredients were not proved. Contradiction, omission and improvement in the testimony of the prosecution witnesses have not been taken into considerations and evidence has not been appreciated in proper perspective of the case. It has resulted in great miscarriage of justice. Defence version has not been accepted. The sentence of appellant is also severe and uncalled for.

8. I have heard learned counsel for both the parties and perused the entire record.

9. Learned counsel for the State has supported the findings of conviction and order of sentence recorded by Trial Court and prayed for dismissal of appeal.

10. Trial Court has found the testimony of Angad Prasad Shukla (PW-3) and Uma Shankar Singh (PW-7) reliable. The Trial Court has found the corroboration of their testimony from witness of Awadhilal (PW-1), Rajendra Prasad (PW-2) from the fact that they have admitted

their signature on the Ex.P-1 to Ex.P-12 and discussed their hostility in para-15 of the judgment regarding rest of the version. The defence of dispute with a person belonging to the Kol caste has been discarded recording the reasons in para-11 of the judgments. Findings of the Trial Court are based on proper appreciation of the circumstances in totality. Reappreciation of the testimony of these witnesses does not afford ground to discard their testimony. Trial Court is right in holding them credible.

11. Trial Court has discussed the compliance of Section 50 and Sections 41 and 42 of NDPS Act, 1985 in para-16 of the judgment. Contents of notice (Ex.P-3) and Panchnama of seizure (Ex.P-5) ensure the compliance of Section 50 of the NDPS Act. Detailed version of the proceedings conducted by Uma Shankar Singh (PW-7) proves beyond doubt that on 04.04.2006 appellant-accused was found in possession of 1250 gram material contained in Articles A, B and C and Head Constable Dadda Singh (PW-6) has categorically stated that the three packets were kept in the register (Ex.P-9) and making entry at serial no.9/06 on 04.04.2006. Entries of concerned sanahs have been proved properly. Constable Jaichandra Singh (PW-5) had deposed that one packet seized. Ganja was deposited in the Forensic Science Laboratory, Sagar with the letter (Ex.P-17) of Superintendent of Police, Sidhi and deposited the same through receipt (Ex.P-18). No material has been brought through cross-examination which caused doubt on the testimony of Jaichandra (PW-5) and Dadda Singh (PW-6).

12. Trial Court has admitted the report of State Forensic Science Laboratory, Sagar under Section 293(4)(a) of the Cr.P.C. as Ex.P-31.

As per Ex.P-31 the material sent to the laboratory for examination is Ganja. Non-examination of Scientific Officer of State Forensic Science Laboratory, Sagar does not give benefit to the appellant-accused. Trial Court has recorded the findings as per law. On the appreciation of prosecution evidence and the probable defence of appellant-accused, the findings of Trial Court regarding conviction of appellant-accused under Section 20(b)(ii)(B) of NDPS Act, 1985 possessioning of 1250 gram contraband Ganja on 04.04.2006 near Dalda Factory village Sarra P.S. Churhat does not call for interference. Hence the conviction of the appellant-accused under Section 20(b)(ii)(B) of NDPS Act, 1985 is affirmed.

13. Trial Court has recorded in para-20 of the judgment that appellant-accused has no criminal antecedent.

14. Considering the appellant-accused as first offender quantity of contraband as 1250 gram, this Court deems it fit to reduce the sentence from 1 year to 6 months.

15. Accordingly, this appeal is partly allowed and affirming the conviction of the appellant-accused under Section 20(b)(ii)(B) of Narcotic Drugs and Psychotropic Substances Act, 1985 the sentence is reduced from 1 year rigorous imprisonment to 6 months rigorous imprisonment. The period of sentence already undergone by the appellant-accused shall be set-off towards the sentence. Trial Court is directed to prepare the super session warrant and ensure to serve the remaining jail sentence by appellant-accused.

16. A copy of this order be sent to the trial Court concerned for necessary compliance.

17. With the aforesaid, the present appeal stands **partly allowed** and **disposed off**.

(GAJENDRA SINGH)
JUDGE

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