

(2022) 07 CHH CK 0012

Chhattisgarh High Court**Case No:** Criminal Appeal No. 243 Of 2022

Ajay Kumar Sarthi

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision: July 4, 2022**Acts Referred:**

- Narcotic Drugs And Psychotropic Substances Act, 1985 - Section 20(b)(ii)(B), 50
- Code Of Criminal Procedure, 1973 - Section 313

Hon'ble Judges: Sachin Singh Rajput, J**Bench:** Single Bench**Advocate:** Ajay Mishra, Dipti Shukla**Final Decision:** Partly Allowed

Judgement

This appeal has been preferred against the judgment dated 16.1.2020 passed by Special Judge, NDPS, Korba in Special Criminal (NDPS) case No.

27/2018 convicting the appellant under Section 20 (b) (ii)(B) of the Narcotic Drugs Psychotropic Substances Act and sentencing him to undergo RI

for 04 years and pay fine of Rs. 3000/-, plus default stipulation.

2. According to the case of prosecution, on 6.9.2018, Vijay Chelak Inspector of Police Station Kusmunda, Korba, received an information from

informatnt that two persons were standing near Adarsh Nagar Kusmunda Colony near Chunni Bazar on a Scooty bearing registration No. CG-12-AT

7027 for selling contraband article (Ganja). He recorded the above information in Rojnamcha Sinha and prepared Mukhbir Suchna Panchnama in

presence of the witnesses. He also informed about this information to the higher officials, thereafter, he reached the spot along with the witness. In

compliance of Section 50 of the NDPS Act he gave notice to the appellant and obtained his consent for search. On being searched total 1.650 Kgs of contraband Ganja was found in his possession. He seized the above contraband Ganja and prepared two sample packets of 100 grams each and after completion of other formalities he returned to the police station along with the seized property and the appellant, then he recorded the FIR and deposited the seized property in Malkhana. Thereafter, sample packets were sent for examination to the FSL. After completion of investigation, charge-sheet was filed by the police. To prove the appellant in the crime in question, prosecution examined as many as seven witnesses. In the statement of the appellant recorded under Section 313 CrPC the appellant pleaded his innocence and false implication in the case. However, no defence witness was examined by the appellant. After conclusion of trial, trial Court convicted and sentenced the appellant as mentioned in paragraph No.1 of this judgment. Hence this appeal.

3. Learned counsel for the appellant submits that he does not want to press this appeal on merits and confines his argument to the sentence part thereof only. He further submits that out of 04 years of jail sentence, the appellant has already undergone about two years, he has no criminal antecedent and he is facing the lis since 2018 i.e. for about two years, and therefore, the jail sentence awarded to the appellant may be reduced to the period already undergone by him. Counsel for the appellant submits that in the case of co-accused i.e. Criminal Appeal No. 42 of 2020 (Chain Das v. State of CG) the co-ordinate Bench has reduced the sentence to the period already undergone, and therefore, similar relief may be extended to the appellant herein as well.

4. On the contrary, learned State counsel opposed the appeal and supported the judgment impugned. She however does not dispute that the case taken support of and the present one stand on the similar footing.

5. Heard counsel for the parties and perused the record minutely.

6. Considering the above facts and circumstances of the case, particularly considering that out of total jail sentence of four years, the appellant has already remained about two years in jail, that he is facing the lis since 2018 and that there is no criminal antecedent against him, this Court is of the

considered opinion that the ends of justice would be met if while upholding the conviction imposed on the appellant, the jail sentence awarded to him is reduced to the period already undergone by him.

7. Consequently, the appeal is partly allowed. Conviction of the appellant under the aforementioned section is affirmed and he is sentenced to the period already undergone by him. The fine sentence is however affirmed.

8. It is reported that the appellant is in jail. He be released forthwith if not required in any other case.

9. Records of the Court below be sent back along with a copy of this order forthwith and necessary compliance.