



HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

CRA No. 923 of 2021

- Billu S/o Gaffar Aged About 34 Years R/o Jassi Guda 217 Police Station Ghantaghar District Ghaziabad Uttar Pradesh Civil And Revenue District Ghaziabad Uttar Pradesh., District : Ghaziabad, Uttar Pradesh **---- Appellant**

Versus

- State of Chhattisgarh Through Police Station Keshkal District Kondagaon Chhattisgarh., District : Kondagaon, Chhattisgarh **---- Respondent**

CRA No. 1700 of 2021

- Mohammad Imtiyaz S/o Abdul Rasul Aged About 30 Years R/o Jainagar Jaipur P.S. Jaipur Town, District Koraput Orissa. **---- Appellant**

Versus

- State of Chhattisgarh Through Station House Officer, Police Station Keshkal, District Kondagaon Chhattisgarh. **---- Respondent**

28.11.2022	Mr. Ajay Mishra, counsel for the appellant in CRA No. 923 of 2021. Mr. Shailendra Kumar Shukla, counsel for the appellant in CRA No. 1700 of 2021. Mr. R.M. Solapurkar GA and Mr. Praveen Shrivastava, Panel Lawyer for the State/respondent. Since an identical issue is involved in both the criminal appeals, applications for suspension of sentence and grant of bail to the appellants. are heard analogously and are being disposed of by this common order. By the impugned judgment dated 27.7.2021 and 1-10-2021n passed by the learned Special Judge (under NDPS Act),Kondargaon, District Kondagaon in Special Criminal Case under the NDPS Act No. 25 of 2017, the appellants stand convicted, as under:- <table border="1" data-bbox="378 1831 1472 1980"> <thead> <tr> <th data-bbox="378 1831 792 1885">Conviction</th><th data-bbox="792 1831 1472 1885">Sentence</th></tr> </thead> <tbody> <tr> <td data-bbox="378 1885 792 1980">U/s 20(b)(ii)(C) of the NDPS Act, 1985.</td><td data-bbox="792 1885 1472 1980">R.I. for 10 years and fine of Rs. 1,00,000/- each in default of payment of fine amount,</td></tr> </tbody> </table>	Conviction	Sentence	U/s 20(b)(ii)(C) of the NDPS Act, 1985.	R.I. for 10 years and fine of Rs. 1,00,000/- each in default of payment of fine amount,
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U/s 20(b)(ii)(C) of the NDPS Act, 1985.	R.I. for 10 years and fine of Rs. 1,00,000/- each in default of payment of fine amount,				



	to undergo additional RI for one year.
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Learned counsels for the respective appellants would submit that the trial Court without appreciating the Standing Order No. 1/89 dated 13th June, 1989 which has been framed by Government of India in exercise of powers conferred by sub-section (1) of Section 52A of the NDPS Act, 1985 with regard to disposal of seized Narcotics Drug Psychiatric substance has convicted the appellants. Learned counsels for the appellants have drawn attention of this Court towards Section 2 of the Standing Order which deals with the general procedure for sampling, storage, etc. They would further submit that as per Standing Order, Clause 2.4, in case of seizure of a single package/container, one sample in duplicate shall be drawn. Normally, it is advisable to draw one sample (in duplicate) from each package/container in the case of seizure of more than one package/container. In the present case, there are 14 packets as reflected from identification panchnama of contraband article *ganja*, therefore, the prosecution should have taken sample in duplicate from each package whereas in the present case after mixing the entire contraband *ganja*, they have prepared only two samples of 50-50 grams as evident from Ex. P/22. This vital aspect has been ignored by the trial Court while convicting the appellants. He would further submit that Investigating Officer Sarad Dubey (PW-) has described that he has seized 14 packets of contraband *ganja* from accused persons and after mixing it, he has prepared two samples of 50-50 grams and sealed the same and sent to FSL for chemical examination. He would further submit that the Naib Tahsildar (PW-7) has been examined before the trial court who in his examination-in-chief has stated that in his presence Investigating Officer has mixed the contraband *ganja* consisting of 14 packets, two samples of 50-50 grams have been prepared from material collected from 14 packets. They would further submit that mandatory provisions of the Act, 1985 have not been complied



with by the authorities while convicting the appellants

In support of their submission, they would further draw attention of this Court towards the judgment passed by Hon'ble the Supreme Court in the case of **Union of India Vs. Bal Mukund and others** reported in **(2009) 12 SCC 161**. They would further submit that again Hon'ble the Supreme Court in the case of **Union of India Vs. Mohanlal & another** reported in **(2016) 3 SCC 379**, has examined provisions of Section 52-A & 55 of the NDPS Act, handling and disposal of seized narcotic drugs and psychotropic substance and has also considered the Standing Order No. 1/89 to ensure proper security against theft, pilferage and replacement of seized drugs. Learned counsels for the appellants would further submit that the Standing Order No. 1/89 has again come up for consideration before High Court of Delhi in the case of **Amani Fidel Chris Vs. Narcotics Control Bureau** [CRLA No. 1027 of 2015 (Decided on 13.03.2020)], wherein the Division Bench of Delhi High Court has acquitted the accused on account of non-compliance of mandatory provisions of Standing Order No. 1/89. Against that order, Special Leave to Appeal (Crl.) No. 5088 of 2020 has been filed before the Hon'ble Supreme Court which has also been dismissed by Hon'ble the Supreme Court on 10.02.2021. Learned counsel for the appellants would submit that in identical situation, Division Bench of this Court in Criminal Appeal No. 1616/2018 has granted bail to the appellants vide its order dated 24.08.2021, therefore, suspension of sentence and grant of bail to the appellants may be considered and the appellants may be released on bail. Lastly, they would submit that the appellant Billu in CRA No 923 of 2021 has already undergone of jail imprisonment more than five years and five months and appellant Mohammad Imtiyaj in CRA No 1700 of 2021 have already undergone of jail imprisonment more than two years and three months, that the appeal is of the year 2021, final hearing of the appeal will take some time, therefore, the appellants may be



enlarged on bail.

Learned State counsel while opposing the bail application would submit that from the possession of the appellants 77.470 KGs contraband *ganja* was seized which is more than the commercial quantity. He would further submit that Standing Order No. 1/89 is not mandatory in nature and its discretionary and non-compliance of the Standing Order does not vitiate the trial, since the appellants have been convicted for the serious offence of NDPS Act, therefore, they are not entitled to be released on bail.

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

Having considered the facts and circumstances of the case the High Court of Delhi in the case of **Amani Fidel Chris vs. Narcotics Control Bureau in CRL Appeal No. 1027/2015 decided on 13.03.2020**, considered the Standing Order 1/88 which is *pari materia* with Standing Order 1/89 and has held in paragraph-17 of its judgment which reads as under :-

“Mixing of the contents of container/package (in one lot) and then drawing the representative samples is not permissible under the Standing Orders and rightly so since such a sample would cease to be a representative sample of the corresponding container/package.”

The High Court of Delhi has acquitted the accused in that case. Against that order, SLP was preferred before the Hon'ble Supreme Court which was also dismissed on 10.02.2021.

Considering the vital aspect of non-compliance of mandatory provisions of Standing Order No. 1/89 whereby the trial Court has convicted the appellants, considering the order passed by the Division Bench of this Court in CRA No. 1616 of 2019 on 24.08.2021 and also considering the fact that the appellants have already undergone the jail sentence i.e. more than five years and five months and two years and three months out of 10 years maximum jail sentence awarded to them and also



considering the fact that the appeal is of the year 2021 and final hearing of the appeal will likely to take some time for its disposal, therefore, I am inclined to allow the applications for suspension of sentence and grant of bail to the appellants.

Accordingly, the applications for suspension of sentence and grant of bail filed by both the appellants are allowed and it is directed that the substantive jail sentence imposed upon the appellants shall remain suspended during pendency of this appeal and they shall be released on bail on each of them furnishing a personal bond in sum of Rs. 1,00,000/- along with two local sureties each of the like sum to the satisfaction of the concerned trial Court for their appearance before Registry of this Court on **12-1-2023**. They shall thereafter continue to appear before the Registry of this Court on all such subsequent dates as are given to them by the Registry of this Court till the disposal of this appeal. It is made clear that for appearance of the accused before the Registry of this Court, the interval between the dates to be given by them shall not be less than 90 days.

List this appeal for final hearing in the **month of March, 2023**.

Certified copy as per rules.

Sd/-

(Narendra Kumar Vyas)
Judge