



NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1241 of 2021**

1. Rakesh Umar Vaishya S/o Amrit Lal Umar Vaishya Aged About 30 Years Caste Baniya, R/o Village Tongpal Infront Of Thane, District Sukma Chhattisgarh., District : Sukuma, Chhattisgarh
2. Shiv Kumar Baghel S/o Mosuram Baghel Aged About 28 Years Caste Mahra, R/o Village Tongpal Nakapara, District Sukma Chhattisgarh.
3. Onkar Gupta S/o Late Siyaram Gupta Aged About 35 Years R/o R.S. Colony, Tongpal, Behind Thana, District Sukma Chhattisgarh.

---- Appellants**Versus**

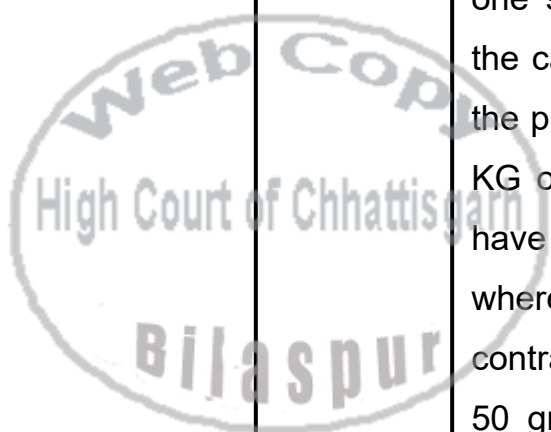
State of Chhattisgarh Through Station House Officer Police Station Kotwali Bastar, District Bastar Chhattisgarh., District : Bastar(Jagdalpur), Chhattisgarh

---- Respondent

09/02/2023	Mr. Shishir Dixit, Advocate for the appellants. Mr. B.L. Sahu, PL for the State. Heard on application (I.A. No. 01/2021) under Section 389 (2) CrPC for suspension of sentence and grant of bail to the appellants. By the impugned judgment dated 21.09.2021, passed by Special Judge (NDPS Act) Jagdalpur District Bastar (CG) in Special Criminal Case (NDPS Act) No. 11/2020, the appellants stand convicted and sentenced as under:- <table border="1" data-bbox="491 1702 1417 1971"><thead><tr><th>Conviction</th><th>Sentence</th></tr></thead><tbody><tr><td>U/s. 20 (B) (ii-C) of the NDPS Act, 1985.</td><td>RI for 10 years and fine of Rs. 1,00,000/- in default of payment of fine 1 year additional RI (each of the appellants)</td></tr></tbody></table> Learned counsel for the appellants would submit that	Conviction	Sentence	U/s. 20 (B) (ii-C) of the NDPS Act, 1985.	RI for 10 years and fine of Rs. 1,00,000/- in default of payment of fine 1 year additional RI (each of the appellants)
Conviction	Sentence				
U/s. 20 (B) (ii-C) of the NDPS Act, 1985.	RI for 10 years and fine of Rs. 1,00,000/- in default of payment of fine 1 year additional RI (each of the appellants)				



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 counsel for the appellants have drawn the attention of this Court towards section 2 of the Standing Order which deals with the general procedure for sampling, storage, etc.. He 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 3 bags, each bags contained 20 KG of contraband ganja, therefore, the prosecution should have taken sample in duplicate from each packages whereas in the present case after mixing the entire contraband ganja they have taken only two samples of 50-50 grams as evident from Ex.P-60. This vital aspect has been ignored by the trial Court while convicting the appellants. Daldeep Singh Thakur (PW-14) deposed that sumras i.e. mixing of the entire material, has been done before the SDM Bastar and he has taken only two samples of 50-50 grams and sent the same for forensic examination of the substance thereafter, he put his signature on it. In support of his submission, he would further draw the attention of this Court towards the judgment passed by the Hon'ble Supreme Court in the case of **Union of India vs. Bal Mukund and others (2009) 12 SCC 161**. He would further submit that again the Hon'ble Supreme Court in the case **Union of India vs. Mohanlal and Another (2016) 3**





SCC 379 has examined the provisions of section 52-A and 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 counsel 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**, in 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 the Hon'ble 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 of the appellants may be considered and the appellants be released on bail. Lastly, he would submit that the appellant No. 1 and 3 remained in jail about 2 years and 21 days and the appellant No.2 remained in jail about 9 months and 2 days. He would submit that the appeal is of the year 2021, final hearing of the appeal will take some time, therefore, the appellant may be enlarged on bail.

The State has filed the reply to the application for suspension of sentence and grant of bail wherein they have contended that as per Section 37 of NDPS Act, bail should not be granted to an accused unless the accused is able to





satisfy twin conditions i.e. reasonable ground for believing that the accused is not guilty of such an offence and that the accused would not commit an offence or is not likely to commit an offence u/s 19, 24 or 27 A of NDPS and also for offence involving commercial quantity shall not be released.

Learned State counsel while opposing the bail application would submit that from the possession of the appellants 60 KG contraband *ganj* 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, 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 No. 1 and 3 have remained in jail about 2 years and 21 days and the appellant No. 3 has remained in jail about 9 months and 2 days out of 10 years maximum jail sentence awarded to them and also considering the fact that the appeal is of the year 2021 and hearing of the appeal will likely to take some time for its disposal, therefore, I am inclined to allow this application.

Accordingly, the application is allowed and it is directed that the substantive jail sentence imposed upon the appellants shall remain suspended during the pendency of this appeal and they shall be released on bail on each of the appellants furnishing a personal bond in sum of Rs. 1,00,000/- along with two local sureties of the like sum to the satisfaction of the concerned trial Court for their appearance before the Registry of this Court on **20.03.2023**. They shall thereafter continue to appear before the Registry of this Court on all such subsequent dates as is given to them by the Registry of this Court till the disposal of this appeal.

List this case for final hearing.

Sd/-

(Narendra Kumar Vyas)

Judge