



HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1444 of 2021

1. Satpal S/o Balchand, Aged about 28 years, resident of House No. 840 Ward No. 07, Sanjay Enclave Part -1, Sector 22, District Faridabad (Haryana)
1. Hemraj S/o Shyamlal, Aged about 23 Years, R/o Village Ghaudi (Tudhera), Thana Palwal, District Palwal (Haryana)
2. Anil S/o Kishanchand, Aged about 23 Years, R/o Village Chandhar, Thana- Palwal District -Palwal (Haryana)

---- Appellants

Versus

State of Chhattisgarh Through Station House Officer, Police Station Pharasgaon, District Kondagaon (Chhattisgarh)

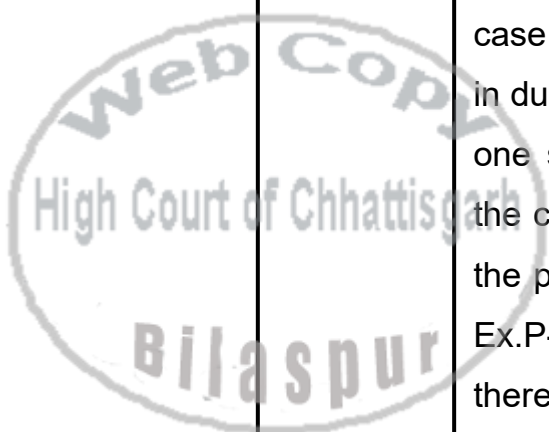
---- Respondent

17/11/2022	Mr. Vikash Pradhan, Advocate for the appellants. Mr. R.S. Deo, PL for the State. Heard on application (I.A. No. 01/2021) under Section 389 CrPC for suspension of sentence and grant of bail to the appellants. By the impugned judgment dated 24.09.2021, passed by Special Judge (NDPS Act) Kondagaon, District Kondagaon (CG) in Special Sessions Criminal Case No. 34/2018, the appellants stand convicted and sentenced as under:- <table><tr><th data-bbox="496 1720 943 1776">Conviction</th><th data-bbox="943 1720 1422 1776">Sentence</th></tr><tr><td data-bbox="496 1776 943 2007">U/s. 20 (B) (ii-C) of the NDPS Act, 1985.</td><td data-bbox="943 1776 1422 2007">RI for 10 years and fine of Rs. 1,00,000/- in default of payment of fine 1 year additional RI to all the</td></tr></table>	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 to all the
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appellants.

Learned counsel for the 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 counsel for the appellants has 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 65 containers as reflected from Ex.P-11 identification panchanan 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 25 grams of sample as evident from Ex.P-45. This vital aspect has been ignored by the trial Court while convicting the appellants. Hewould further submit that Tahsildar (PW-7) in his deposition has categorically stated that after doing *sumras* i.e. mixing of the entire material, samples have been taken from seized articles 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 stence and grant of bail of the appellants may be considered and the appellants be released on bail. Lastly, he would submit that the appellants have already undergone of jail imprisonment i.e. about 4 years and 10 months and 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.

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, no person accused of an offence punishable for 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 273.222 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 have already undergone the jail sentence i.e. more than 4 years and 10 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 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 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 the Registry of this Court on **05.01.2023**. They shall thereafter continue to appear before the Registry of this Court on all such subsequent dates are are 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