



HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

CRA No. 1390 of 2021

1. Swaminath Rawat, S/o Shri Dharichhand Rawat, Aged About 39 Years, R/o Village- Kureji, P.S. Gadwar, District- Baliya, Uttar Pradesh.
2. Manbodh Kumar Sah, S/o Vijay Kumar Sah, Aged About 34 Years, Occupation Driver, R/o Sakin Belthara Road, Chowkiya Mod, P.S. Ubhaw, District- Baliya (U.P.)

---- Appellants

Versus

State of Chhattisgarh, Through The Police Station- Sariya, District- Raigarh (C.G.)

---Respondent

21.11.2022	Mr. Sanjay Agrawal, counsel for the appellants. Mr. R.C.S. Deo, Panel Lawyer for the State/respondent. Heard on application for suspension of sentence and grant of bail to the appellants. By the impugned judgment dated 27.10.2021 passed by the learned Special Judge (under NDPS Act), Raigarh, District- Raigarh (C.G.) in Special Criminal Case under the NDPS Act No. 01/2018, the appellants stand convicted, as under:- <table data-bbox="386 1413 1479 1602"><tr><th data-bbox="386 1413 773 1465">Conviction</th><th data-bbox="773 1413 1479 1465">Sentence</th></tr><tr><td data-bbox="386 1465 773 1602">U/s 20(b)(ii)(C) of the NDPS Act, 1985.</td><td data-bbox="773 1465 1479 1602">R.I. for 10 years and fine of Rs. 1,00,000/- in default of payment of fine further 4 years additional R.I. to each appellant.</td></tr></table> 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	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/- in default of payment of fine further 4 years additional R.I. to each appellant.
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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 25 packets as reflected from identification panchnama of contraband article *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 prepared only two samples of 50-50 grams as evident from Ex. P/15. This vital aspect has been ignored by the trial Court while convicting the appellants. He would further submit that Investigating Officer (PW-7) has described that he has seized 25 packets of contraband *ganja* from accused- Swaminath Rawat & Manbodh Kumar Sah and after mixing it, he has prepared two samples of 50-50 grams and sealed the same. The Investigating Officer (PW-7) in his examination-in-chief has stated that he has mixed the contraband *ganja* which has been consisted in 25 packets whereas in his cross-examination at paragraph 30 has stated that it is correct to say that he has not done mixing of 25 packets contraband *ganja*. He has also stated that two samples of 50-50 grams have been prepared from material collected from 3-4 packets. He has also stated that the samples have not been prepared from all the 25 packets.

In support of his submission, he 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**. He 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 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** [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, he would submit that the appellants have already undergone of jail imprisonment i.e. about 1 year 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 under Sections 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 25 KG 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, 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 1 year 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 final hearing of the appeal will likely to take some time for its disposal, therefore, I am inclined to allow this application.

Accordingly, the application for suspension of sentence and grant of bail is 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 **19th December, 2022**. 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.

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

**Sd/-
(Narendra Kumar Vyas)
Judge**

Arun

