



HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

Criminal Appeal No.1694 of 2021

1. Shubham Sharma S/o Ravindra Sharma, Aged About 20 Years R/o Village Kosta, Raithara, Thana Saman District Rewa (Madhya Pradesh)
2. Ashish Mishra S/o Saroj Kumar Mishra, Aged About 21 Years R/o Chillgaon, Police Station Naigarhi, District Rewa (Madhya Pradesh)

--- Appellants

Versus

- State Of Chhattisgarh Through District Magistrate, Raigarh District Raigarh Chhattisgarh

---Respondent

11/02/2022		Mr. Goutam Khetrapal, counsel for the appellant No.01.	
		Mr. Awadh Tripathi, counsel for the appellant No.02.	
		Mrs. Madhunisha Singh, Dy. A.G. for the State.	
		Heard on I.A. No.01/2021, an application for suspension of sentence and grant of bail to the appellants.	
		Appellants have been convicted and sentenced by the judgment of conviction and order of sentence dated 17.12.2021, in Special (N.D.P.S.) Case No.10/2018, passed by the Learned Special Judge (N.D.P.S.) Act, Raigarh, District- Raigarh (C.G.) in the following manner :-	
		<u>Conviction</u>	<u>Sentence</u>
		U/s. 20(B)(ii)(C) of N.D.P.S. Act.	15 years R.I. and fine of Rs.1,00,000/- in default of payment of fine amount, additional R.I. 04 years to each.



Learned counsel appearing for appellants would submit that the appellants have been erroneously convicted by the learned trial Court without their being any evidence of prosecution present beyond reasonable doubt. The independent witnesses of search and seizure Sushil Mehar (P.W.-1), Shyam Lal Pradhan (P.W.-2) and Murlidhar Panigrahi (P.W.-3) have not supported the prosecution case. The conviction against the appellant is based only on the evidence of the I.O.- Janak Ram Sahu (P.W.-6). The evidence of I.O.- Janak Ram Sahu (P.W.-6) does not inspire confidence at all.

It is a case of false implication of these appellants, who had inadvertently taken a lift in the car, in which there were already two other occupants present. The other two occupants, who were the main culprits absconded from the car, when the same was stopped by the police. Ravindra Sharma, the father of the appellant No.01 filed a complaint against Sub-Inspector Janak Ram Sahu (P.W.-6) making allegation of false implication of the appellants, which was inquired by A.S.I. B.P. Mishra, from Complaint Cell, Raigarh and the report dated 09.04.2018 was submitted, in which the complaint against the I.O. Janak Ram Sahu (P.W.-6) was found proved, that he had released another offender in the case after taking bribe. The appellants had examined one witness in defence, who has supported this version. Further, the I.O. Janak Ram Sahu (P.W.-6) has concealed the presence of two other persons in the car, one of whom had absconded and the other was apprehended, who was later on released after the bribe transaction. Although the report of A.S.I. B.P. Mishra has been rejected by S.D.O., Sarangarh, District- Raigarh, C.G. by the report dated 06.03.2019, but in the same, there is a mention that I.O.- Janak Ram Sahu admitted in his statement in inquiry, that there was one another person in the car, who had absconded. Hence, the conviction on the basis of such evidence does not inspire confidence at all. It is also submitted that the mandatory provision of the N.D.P.S. Act were also not complied in the procedure of search and seizure. Hence, the



appellants have a good case to argue in this appeal, therefore, it is prayed that application may be allowed and they may be enlarged on bail.

Per contra, the learned State counsel opposes the application and submissions made by the learned counsel for the appellant. It is submitted that the previous report of A.S.I. B.P. Mishra has been set aside by the S.D.O. vide report dated 06.03.2019. The prosecution has proved its case beyond reasonable doubt. The Investigation Officer has followed all the mandatory provisions and conducted the search and seizure in, which huge quantity of contraband was found in possession of both the appellants. Therefore, the conviction against the appellants is sustainable and the application is liable to be rejected.

We have heard the learned counsel for the parties and perused the record of the trial Court.

Considered on the submissions. After taking into consideration, the evidence present on the record of the trial Court and also that the complaint was made against the Investigation Officer of the case by the father of appellant No.1, which has been inquired and reported has some material, which would be required to be considered at the time of deciding this appeal. On this basis, we are of the view that at present, appellants should be enlarged on bail during the pendency of appeal against them. Hence, the application is allowed.

Heard on I.A. No.01/2021, an application for suspension of sentence and grant of bail to the appellants, is allowed.

Execution of substantive jail sentence imposed on appellants shall remain suspended and they are directed to be released on bail on their executing a personal bond for a sum Rs.50,000/- each with one local surety each for the like sum to the satisfaction of the trial Court for their appearance before the Registry of this Court on **25th April,**



2022. They shall thereafter appear before the trial Court on a date to be given by the Registry of this Court and shall continue to appear there on all such subsequent dates as are given to them by the said Court, till the disposal of this appeal.

Certified copy today.

Sd/-

(R.C.S. Samant)
Judge

Sd/-

(Arvind Singh Chandel)
Judge