CGHC010276342015

**NAFR**

INDRAJEET SAHU
Digitally signed by INDRAJEET SAHU
Date: 2026.10.26 12:52:55 +0530

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**CRA No. 1106 of 2015**

**1 -** Ganesh Prajapati S/o Lalji Prajapati Aged About 20 Years R/o Village- Dandarkala, Police Station -Panki, District - Palamu Jharkhand.

--- **Appellant**

**Versus**

**1 -** State of Chhattisgarh Through Station House Officer, Police Station, Gandhinagar, District - Surguja Chhattisgarh.

--- **Respondent(s)**

**CRA No. 1132 of 2015**

**1 -** Shailendra Singh @ Rembo S/o Moti Singh Gond Aged About 20 Years R/o Gandhinagar Ward No.04, Infront of High School Ambikapur, Thana - Gandhinagar, Civil And Revenue Distt. Surguja Chhattisgarh.

---**Appellant(s)**

**Versus**

**1 -** State of Chhattisgarh Through The District Magistrate, Ambikapur, Distt. - Surguja Chhattisgarh.

--- **Respondent(s)**

**CRA No. 1594 of 2015**

**1 -** Sukhan Singh S/o Kalicharan Aged About 62 Years R/o Gandhinagar Ward No. 04, Ambikapur, Thana Gandhinagar, Civil And Rev. Distt. Surguja, Chhattisgarh.

---**Appellant(s)**

**Versus**

**1 -** State of Chhattisgarh District Magistrate Ambikapur, Distt. Surguja, Chhattisgarh.

--- **Respondent(s)**

(Cause-title taken from Case Information System)

| | | |
|---|---|---|
| For appellants | : | Shri Rahul Mishra and Shri VK Pandey, Advocates. |
| For Respondent | : | Shri Atanu Ghosh, Dy. Govt. Advocate. |

**Hon'ble Shri Justice Ravindra Kumar Agrawal, J**

**Judgment on Board**

**09.10.2026**

**1.** These three criminal appeals arise out of same Crime number and same Sessions trial, therefore, they are being heard and decided together by this common judgment.

**2.** CRA No.1106 of 2015 has been filed by the accused Ganesh Prajapati and CRA No.1132 of 2015 has been filed by the accused Shailendra Singh @ Rambo under Section 374(2) of the Code of Criminal Procedure, 1973 against the impugned judgment of conviction and sentence dated 21.08.2015 passed by the Special Judge (NDPS Act) Ambikapur, Surguja, in Special Case No.06/2014 whereby the appellants have been convicted and sentence in the following manner:

| Accused | Conviction U/s | Sentence |
|---|---|---|
| Ganesh Prajapati | 21(b) of the NDPS Act | RI for 10 years with fine of Rs.50,000/-, in default of payment of fine, additional RI for 1 year |
| Shailendra Singh @ Rembo | 21(b) of the NDPS Act | RI for 10 years with fine of Rs.50,000/-, in default of payment of fine, additional RI for 1 year |

**3.** Criminal Appeal No.1594 of 2015 has been filed by the owner of the subject vehicle motorcycle bearing registration No.CG-15-CJ-8476

under Section 454 of CrPC challenging confiscation of his vehicle in the said offence of Crime No.40/2014 registered at Police Station, Gandhi Nagar, Ambikapur, District Surguja, for the offence under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, the NDPS Act) from which the Special Criminal Case No.06/2014 arises in which two accused persons namely Ganesh Prajapati and Shailendra Singh @ Rambo have been convicted and his subject vehicle has been confiscated by the trial court.

**4.** The case of prosecution, in brief, are that on 21.02.2014, PW-12 V.K. Awasthi, Sub Inspector of Police posted at Police Station Gandhi Nagar, Ambikapur received a secret information that near Gandhi Nagar barrier the accused persons Yogendra Pal @ Babu (since deceased), Ganesh Prajapati and Shailendra Singh @ Rambo are engaged in illegal selling on brown sugar and they are roaming in their motorcycle No.CG-15-CJ-8476. The secret information was reduced in writing and it was informed to City Superintendent of Police and obtained acknowledgment. Considering the emergent situation, the necessity to search without warrant Panchnama was prepared and the police party proceeded towards the suspected place. Near Gandhi Nagar barrier, three accused persons would found who were in their motorcycle. Notice under Section 50 of the NDPS Act was served upon them and they were informed their right to be served by any gazetted officer, Magistrate or by police authority, to which they gave their consent to be served by police authority. The police party also gave their own search, but no any incriminating substance were found. From the search of accused Yogendra Pal @ Babu, brown sugar like

powder which was kept in plastic polythene packets were recovered from his backpack. On being weight, it was found 51.700 gram including the weight of the plastic polythene and the net weight of brown sugar was 50.560 gram. Out of total quantity of brown sugar recovered from accused Yogendra Pal, 5 gram was separated for sample and it was separately sealed. On being interrogation, they disclosed that they took the brown sugar from Garhwa, Jharkhand, and came thorugh motorcycle of Shailendra Singh to sale it at Ambikapur. Necessary Panchnamas were prepared. Spot map Ex.P/21 was prepared by the Revenue Inspector, Nazool and P/22 by the police. The brown sugar was seized. The accused persons, motorcycle, seized brown sugar and its sample were taken to police station where FIR Ex.P/33 was registered against three accused persons for the offence under Section 22 of the NDPS Act. Seized articles were kept in safe custody of Malkhana. Sample packets of brown sugar was sent for its chemical examination to regional FSL Ambikapur from where report Ex.P/34 was received and the contents of diacetyl morphine was found in the powder of packet-A.

**5.** The statement of witnesses under Section 161 CrPC have been recorded and after completion of usual investigation charge sheet was filed against three accused persons before the trial court for the offence under Section 22 of the NDPS Act.

**6.** During investigation, the accused Yogendra Pal @ Babu was admitted to the hospital while he was detained in Central Jail, Ambikapur, however, during treatment he died on 26.02.2014 and therefore

charge sheet was filed only against two accused persons Ganesh Prajapati and Shailendra Singh.

**7.** The trial court framed charge against these two appellants for the offence under Section 21(b) of the NDPS Act. They denied the charge and claimed trial.

**8.** In order to establish the charge against the appellants, the prosecution has examined as many as 12 witnesses. Statement under Section 313 CrPC of the appellants have also been recorded in which they denied the circumstances appears against them, pleaded innocence and have submitted that they have been falsely implicated in the offence. The accused Ganesh Prajapati have stated that he did not know Yogendra Pal and Shailendra Singh and when he was waiting for Bus to go to Wadrafnagar, the police personel arrested him. The accused Shailendra Singh have also stated that he did not know Ganesh Prajapati and Yogendra Pal. The police arrested him from the nearby place of his house.

**9.** The accused persons have examined three defence witnesses Ganesh Prajapati, DW-1, Shailendra Singh DW-2 and Harish Kumar Paikra, DW-3.

**10.** After appreciation of oral as well as documentary evidence led by the prosecution, the trial Court has convicted the appellants and sentenced them as mentioned in opening para of this judgment. Hence these appeals.

**11.** Leaned counsel appearing for appellant-Shailendra Singh and appellant-Ganesh Prajapati, would submit that they are not challenging conviction of the appellants for the offence of Section

21(b) of the NDPS Act, however, they are challenging the sentence and fine amount awarded to the appellants as the same are excessive and maximum sentence awarded to the appellants provided under Section 21(b) of the NDPS Act. The brown sugar (diacetyl morphine) has been seized from the co-accused Yogendra Pal @ Babu and they have been made accused on the ground that they were also in the same motorcycle in which Yogendra Pal was also pillion rider. The present appellants were not having any knowledge that Yogendra Pal was having possession of brown sugar. Total 50.560 gram brown sugar has been seized by the police from Yogendra Pal which is intermediate quantity for which no minimum sentence is provided. The appellants have remained in jail from 21.02.2014 to 21.08.2019 and thereby they have already suffered more than five years and six months of their jail sentence; the offence is of the year 2014 and at that time the appellants were young boy of about 20 years of age; they suffered criminal lis for more than 12 years and looking to the facts and circumstances of the case, their sentence may be reduced for the period already undergone by them. They also pray for reduction of fine amount suitably.

**12.** On the other hand, learned counsel for the State opposes the submissions made by the counsel for the respective appellants and have submitted that looking to the nature and gravity of offence that 50.560 gram brown sugar has been seized from the accused persons and the impact of contraband seized from them, they are not entitled for any leniency in their sentence. Although seizure memo has been prepared with respect to seizure from Yogendra Pal @ Babu, but at

the relevant time all the three accused persons were together in a motorcycle and from the backpack of accused Yogendra the brown sugar has been seized. The evidence available on record clearly reflects that all the accused persons came from Garhwa, Jharkhand along with brown sugar and have been arrested by the Ambikapur police. Thus, even if the seizure of brown sugar is shown to be seized from Yogendra @ Babu, the offence of the present appellants does not dilute. After considering the entire evidence the trial court has rightly convicted them for the alleged offence and in view of the gravity of the offence, they have been rightly sentenced by the trial court which is not required to be reduced and the appeals filed by the appellants are liable to be dismissed.

**13.** I have heard the counsel for the parties and perused the record of trial court.

**14.** Although, the appellants are not challenging their conviction for the offence under Section 21(b) of the NDPS Act, however, this court deem it appropriate to appreciate the evidence available on record with respect to conviction of the appellants for the alleged offence.

**15.** PW-12, V.K. Awasthi, is the investigating officer. He stated in his evidence that on 21.01.2014 he was posted as Sub Inspector at Police Station Gandhi Nagar, Ambikapur. He received a secret information that suspected Yogendra Pal @ Babu, Ganesh Prajapati and Shailendra Singh are engaged in selling illegal contraband and they are roaming to sell it. He recorded the secret information in Rojnamcha, Ex.P/29 and a Secret Information Panchnama Ex.P/1 was prepared. Through Constable Shiv Lal Singh, the copy of secret

information Panchnama and Rojnamcha Sanha were forwarded to CSP, Ambikapur. The necessity to search without warrant Panchnama, Ex.P/2 and also forwarded to CSP Ambikapur. Independent witnesses Sonu Gupta, PW-1 and Surendra Giri, PW-2 were also called and notice, Ex.P/3 was served upon them. After informing the secret information Panchnama to independent witnesses, the police party proceeded towards the suspected place and their departure has been reduced in writing in Rojnamcha, Ex.P/36. When they reached on the spot, they found three person roaming in motorcycle. They were apprehended and then notice under Section 50 of the NDPS Act Ex.P/4 was served upon them and they were informed their right to be served by any gazetted officer, Magistrate or by police, to which they gave their consent to be searched by police authority. The police party gave their own search, but no any incriminating article were recovered from them and Panchnama Ex.P/6 & P/7 were prepared. From the search of backpack of accused Yogendra Pal @ Babu, brown sugar like substance which was wrapped in plastic polythene pouch was found and Talashi Panchnama Ex.P/8 was prepared. The substance was identified to be brown sugar after tasting, smelling and burning and physical identification Panchnama Ex.P/9 was prepared. The brown sugar was homogenized and 0.5 gram were separated for sampling and Panchnama Ex.P/10 was prepared. Weighment witnesses Anirudh Soni, PW-6 was called and his weighment apparatus was physically verified and Panchnama, Ex.P/12 was prepared. On being weight, the total quantity of brown sugar was found 51.700 gram including the weight of plastic polythene and the

net weight of brown sugar was 50.560 gram and weighment Panchnama Ex.P/13 was prepared. The backpack, brown sugar and mobile phone have been seized from accused Yogendra Pal and seizure memo Ex.P/14 was prepared. The motorcycle was also seized from accused Shailendra Singh vide seizure memo Ex.P/15. The specimen seal Panchnama Ex.P/14 was prepared and accused persons were arrested. Their arrest was informed to their family members. Spot map Ex.P/22 was prepared and thereafter the accused persons, seized motorcycle, brown sugar, sample packets were taken to police station and these articles were kept in safe custody of Malkhana and obtained acknowledgment Ex.P/26. Their arrival was also reduced in writing in Rojnamcha Ex.P/37. FIR Ex.P/35 was registered and details of entire proceedings were again forwarded to CSP Ambikapur which is Ex.P/24-A. The sample packet of brown sugar was sent for its chemical examination to regional FSL Ambikapur alongwith memo of Superintendent of Police Surguja and FSL report Ex.P/34 was obtained in which contents of brown sugar (Diacetylmorphine) was found present. The brown sugar kept in Malkhana of the police station was also produced before the court and marked as Article-1.

**16.** In cross examination, he reiterated the proceeding which he did on the spot and Panchnamas which he has prepared during the investigation. But for minor omissions or contradictions, the defence could not be able to extract any material which makes his evidence doubtful despite his detailed cross examination. Being the procedural witness, he proved the entire process of investigation, search and seizure of the

contraband. Though in paragraph 10 of his cross examination he admitted that during the entire investigation he could not find any evidence against the accused Ganesh, however, the accused Ganesh was also with accused Yogendra at the time when brown sugar was seized from him.

**17.** PW-1, Sonu Gupta and PW-2, Surendra Giri were the independent witnesses. Though they have turned hostile, but they admit their signatures over the Panchnamas Ex.P/1 to P/20. PW-3, Ali John Toppo, is the Constable posted at the office of CSP Ambikapur and he proved the acknowledgment Ex.P/2 and P/24.

**18.** PW-4, Sukhan Singh, is the owner of the subject vehicle bearing No.CG-15-CJ-8476. Though he too was declared hostile, however he stated that on the instance of police person he produced the registration papers of his vehicle. In cross examination he denied that his vehicle met with an accident therefore police persons asked him for registration papers of vehicle.

**19.** PW-5, Shiv Lal Singh, is the Constable posted at Police Station Gandhi Nagar. He took the secret information Panchnama and necessity to search without warrant Panchnama to CSP office and obtained acknowledgment.

**20.** PW-6, Anirudh Soni, is the weighment witness. He has stated in his evidence that the police persons brought powder like substance in a plastic polythene to his shop which he weight and found it to be 51.700 gram. The weight of polythene was 1.140 gram and net weight of powder was 50.560 gram. He issued a weithment certificate which is Ex.P/13. At this stage, this witness was declared hostile and on

leading question being asked, he admitted that in the notice Ex.P/11, he was called near Gandhi Nagar barrier along with weighment apparatus, but he denied that he had gone there. Gandhi Nagar High School is at distance of 400 meters from his shop. Nothing is there in his cross examination that he has not weight the contraband in his shop and has not issued the certificate Ex.P/13. This witness is related with the weight of the contraband seized from the accused persons.

**21.** PW-8, Bhageshwar Kurre is the seizure witness of the registration papers of motorcycle Ex.P/25. PW-9, Naresh Kumar Chauhan, is the Inspector of Police posted at Police Station Gandhi Nagar. He recorded the statement of witnesses during investigating, seized the registration papers of motorcycle and thereafter filed the charge sheet. He is the witness to the extent of recording statement of the witnesses and filing of charge sheet and he proved the same.

**22.** PW-10, Satyadev Ram Pradhan, is the Malkhana Moharrir who proved the Rojnamcha, Ex.P/26, Malkhana register Ex.P/27 and another Rojnamcha Ex.P/28 and have stated that he kept the brown sugar and its sample packet in safe custody which were given in sealed condition and made entry in Malkhana register. He handed over the sample packet of brown sugar to Constable Nirmal Kumar to take it to FSL Raipur and made relevant entries in the Rojnamcha.

**23.** PW-11, Nirmal Kumar is the Constable who took the sample packets to FSL Raipur for its chemical examination and obtained acknowledgment Ex.P/29.

**24.** The accused Ganesh Prajapati has been examined himself as DW-1 and as per his defence, he stated that he was waiting for Bus to go to

Wadraf Nagar and he was arrested by the police from Bus Stop. He was taken by the police as a witness in the case, however, he too have been made accused in the case. In cross examination, he stated that against his false implication by the police, he or his family members have not taken any action against the police authorities.

**25.** Likewise the accused Shailendra Singh has also been examined as DW-2 and he too have admitted in his cross examination that he or his family members have not taken any action against his false implication in the case.

**26.** DW-3, Harish Kumar Paikra, have stated that accused Shailendra Singh is the resident of his vicinity. At the time when he was sitting in his shop, the police persons called Shailendra and thereafter he came to know that he was arrested in the offence. In cross examination, he too have stated that he has not made any complaint that Shailendra was with him at the time of alleged offence and he was falsely implicated in the offence.

**27.** As per evidence available on record, three accused persons were arrested in the same motorcycle and from one of them 50.560 gram brown sugar was seized. Against their false implication, the accused persons did not make any effort to make any complaint or avail their remedy against false implication. The defence taken by the accused persons appear to be afterthought and therefore the trial court, after considering the prosecution evidence as well as defence evidence, held the appellants guilty for the offence under Section 21(b) of the NDPS Act.

**28.** The contents of powder like substance was found to be Diacetylmorphine in the FSL report Ex.P/34 and since the brown sugar (Diacetylmorphine) has been seized from one of the accused who was with the present appellants at the time of alleged incident and their seizure has been found proved in accordance with law after complying with all the mandatory provisions of NDPS Act, their conviction for the alleged offence does not suffer from any perversity and the trial court has rightly convicted them.

**29.** So far as the sentence awarded to the appellants are concerned, the submissions made by the counsel for the respective appellants are that, at the time of incident the accused persons were 20 years of age, they have already faced criminal lis for more than 12 years, they have already undergone for more than 5 years and 6 months of their sentence, infact the brown sugar has not been seized from them and they were only found in association with Yogendra @ Babu from whose possession the contraband was seized and further that total 50.560 gram brown sugar (Diacetylmorphine) has been seized which is the intermediate quantity as has been mentioned in serial No.56 of Table notified by the Ministry of Finance, Department of Revenue vide notification dated 16th July, 1996 issued under sub-clause (vii)(a) and xxiii(a) of Section 2 of the NDPS Act, the small quantity of Diacetylmorphine is 5 gram and commercial quantity is 250 gram and the said quantity of contraband comes in intermediate quantity which is more than small quantity and less than commercial quantity for which the offence under Section 21(b) of the NDPS Act is provided and the sentence provided under the said offence is Rigorous

Imprisonment for a term which may extent to 10 years and with fine which may extent to one Lakh rupees. No minimum sentence is prescribed for the offence under Section 21(b) of the NDPS Act. The appellants have already undergone more than 5 years of sentence. Therefore, prayer is made to reduce the sentence awarded to the appellants for the period already undergone by them.

**30.** Considering the aforesaid facts and also that the present appellants were arrested on 22.02.2014 and during trial the accused Ganesh Prajapati remained in jail and accused Shailendra Singh @ Rambo was released on bail on 26.02.2015, the accused Shailendra Singh was again taken into custody on the date of judgment i.e. on 21.08.2015, thereafter both the accused persons have been directed to be released on bail in these appeals vide order dated 28.08.2019 and thereby the accused Ganesh Prajapati has already undergone more than 5 years and 6 months and accused Shailendra Singh @ Rambo had undergone the sentence of more than 5 years. Therefore, this court deem it appropriate to reduce the sentence awarded to the appellants for the period already undergone by them. Their fine sentence is also reduced from Rs.50,000/- to Rs.10,000/-.

**31.** Accordingly, while maintaining conviction of both the appellants, their jail sentence is reduced for the period already undergone by them with fine of Rs.10,000/- to each of the appellants. The fine amount deposited by the respective appellants, if any, shall be adjusted in the fine sentence reduced by this court.

**32.** With the aforesaid modification/alteration of the sentence and fine amount, CRA No.1106 of 2015 filed by appellant Ganesh Prajapati and

CRA No.1132 of 2015, filed by appellant Shailendra Singh @ Rambo, are **partly allowed**.

**33.** CRA No.1594 of 2015 has been filed by the owner of the vehicle challenging the confiscation order dated 19.10.2015 as well as the judgment dated 21.08.2015. The subject vehicle Bajaj Pulsar motorcycle bearing registration No.CG-15-CJ-8476 was found involved in the offence on which all the three accused persons were travelling and one of them was found in possession of 50.560 gram brown sugar (Diacetylmorphine) and motorcycle has also been seized in the offence. The conviction of the accused persons Ganesh Prajapati and Shailendra Singh @ Rambo has been upheld by this court and the accused Yogendra Pal @ Babu died during investigation itself. Since involvement of motorcycle was found in the offence and the accused persons have been convicted for the offence under Section 21(b) of the NDPS Act, the motorcycle seized from accused Shailendra Singh @ Rambo in the offence is liable to be confiscated under Section 60(3) of the NDPS Act and while invoking the said provision of Section 60(3) of the NDPS Act, the vehicle was confiscated vide order dated 19.10.2015 passed by the trial court.

**34.** Learned counsel for the appellant in CRA No.1594 of 2015 would submit that the accused Shailendra is grandson of the appellant who took the vehicle without knowledge of the appellant and the appellant was not in a position to stop him and also does not have any knowledge of the fact that the appellant Yogendra @ Babu was carrying brown sugar with him. Even no sufficient opportunity was

provided to him in the confiscation proceeding and therefore the impugned order of confiscation is liable to be set aside.

**35.** On the other hand, learned counsel for the State would oppose the submissions made by the counsel for the appellant and would submit that the appellant is examined by the trial court as PW-4 and he has also been provided proper opportunity of hearing during confiscation proceeding, but he did not duly contest the confiscation proceeding and remained silent. The confiscation proceeding was conducted in accordance with law and order has already been passed wayback in the year 2015 and no infirmity or illegality could be demonstrated by the appellant in confiscation proceeding and therefore his appeal is liable to be dismissed.

**36.** I have heard the counsel for the parties and perused the record of trial court.

**37.** From perusal of order dated 19.10.2015 passed by the trial court, it transpires that the conviction of the appellants were found proved and the prosecution has alleged that the accused persons were travelling in the vehicle to sell brown sugar at different places, the vehicle was registered in the name of Sukhan Singh which was proved by the registration document, however, the vehicle owner Sukhan Singh failed to explain the allegation and have also failed to produce any evidence that vehicle was being used without his knowledge for commission of the offence. From perusal of evidence of Sukhan Singh, PW-4, in transpires that accused Shailendra Singh is his grandson. There is no evidence on record that he took due care before handing over the vehicle to Shailendra and since there is no evidence

produced by Sukhan Singh that the vehicle was being used without his knowledge and involvement of the vehicle in the offence is found proved, it was liable to be confiscated under Section 60 of the NDPS Act and has ultimately confiscated the same in favour of the State Government.

**38.** In view of conviction of the accused persons and involvement of the vehicle in the offence in question, and further that the vehicle has already been confiscated in absence of any evidence produced by its owner Sukhan Singh, this court does not find any perversity or illegality in the confiscation order passed by the trial court warranting interference of this court.

**39.** Accordingly, CRA No.1594 of 2015 is liable to be and is hereby **dismissed**. However, CRA No.1106 of 2015 and CRA No.1132 of 2015 are **partly allowed** with the aforesaid modification/alteration of the sentence and fine amount indicated hereinabove.

Sd/-
(Ravindra Kumar Agrawal)
**Judge**

inder