
(2025) 11 OHC CK 1920
In the Orissa High Court
Case No : Criminal Appeal No. 300 Of 1998

Pramod Kumar Pradhan

APPELLANT

Vs

State Of Orissa

RESPONDENT

Date of Decision : 18-11-2025

Acts Referred:

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 20(b), 20(b)(i), 29

Citation : (2025) 11 OHC CK 1920

Hon'ble Judges : Sibo Sankar Mishra, J

Bench : Single Bench

Advocate : Debashis Sarangi, Raj Bhusan Dash

Final Decision : Disposed Of

Judgement

S.S. Mishra, J

1. The sole appellant in the present appeal has assailed the judgment and order dated 19.09.1998 passed by the learned Sessions Judge-cum-Special Judge, Khurda, Bhubaneswar in T.R. Case No. 3 of 1998, whereby the appellant has been convicted for offence punishable under Section 20 (b) of the NDPS Act and on that count he has been sentenced to undergo R.I. for one year and to pay a fine of Rs.200/-, in default to undergo further R.I. of one month.

2. This appeal is pending since 1998. When the matter was taken up for hearing, consistently in many dates of hearing, nobody appeared for the appellant. Therefore, on 16.10.2025, this Court has indicated that if none appeared for the appellant on next date of hearing, Amicus Curiae will be appointed. When the matter was taken up on 11.11.2025, again none appeared for the appellant. Therefore, Mr. Debashis Sarangi, learned counsel, who was present in Court, has been requested to assist the Court in the capacity of Amicus Curiae and he has readily accepted the same and rendered his effective assistance to dispose of the appeal.

3. Heard Mr. Debashis Sarangi, learned Amicus Curiae for the appellant and Mr.

Raj Bhusan Dash, learned Additional Standing Counsel for the State.

4. The narrative of the prosecution report in the present case is that on 31st January, 1998 at about 3.25 P.M., accused appellant, namely, Pramod was found sitting on a moped with a bag hung to it. Seeing the police, accused Pramod tried to escape, however he was chased and caught by the police. On search of the bag in possession of the present accused- appellant, Ganja was recovered, which on weighment came to 2 kgs. 30 grams. On interrogation of accused Pramod about the source of procurement of that Ganja, he told that the co-accused Niranjan has procured the same and he (accused Niranjan) has gone to get customer for disposal of the same. The Ganja was seized, samples were taken, sent for chemical examination and was found to be Ganja.

5. On the basis of the aforementioned allegations, Capital P.S. Case No. 48 dated 31.01.1998 was registered, investigation was conducted and the accused-appellant stood charged for the alleged commission of offence punishable under Sections 20(b)(i)/29 of the NDPS Act and on his stance of complete denial and claim for trial, he was put to trial.

6. To establish the charges, the prosecution examined five witnesses. Out of them, P.Ws.1 and 3 were the independent witnesses to the search, recovery and seizure of Ganja. P.W.2, the Inspector-in-Charge of the Capital Police Station, was the informant and an eye witness to the search, recovery and seizure of Ganja. P.W.4, the DSP-cum-Gazetted Officer in whose presence the search, recovery and seizure of ganja was made. P.W.5 was the Investigating Officer.

7. Two accused persons were stood charged in the present case for alleged commission of offence under Sections 20(b)(i)/29 of the NDPS Act for having found possession of 2 kgs. 30 grams of Ganja. However, the co-accused-Niranjan Nayak has been acquitted on the ground that he was not found in possession of the contraband ganja and he was only implicated in the present case on the basis of the disclosure of his name by the co-accused, i.e., the present appellant. In so far as the present appellant is concerned, he has been convicted by the learned trial court primarily relying upon the testimony of P.Ws. 4 and 5. The independent witnesses have not fully supported the prosecution case. However, their evidence has also been taken into consideration by the learned trial court while arriving at the following conclusion:-

"9. With regard to the rest part of the prosecution case, the evidence of P.W. 2 finds corroboration in the evidence of P.W. 4 and to some-extent in the evidence of independent witnesses P.Ws. 1 and 3. I also do not find any reason to discard the evidence of P.W. 4 since because he is a police officer. The oral evidence of P.W.2 coupled with Ext. 3 and Ext. 3/2 shows that the accused was explained that his search could be taken in presence of a Gazetted Officer or a Magistrate to which he replied that his search should be taken before a Gazetted Officer and accused Pramod signed in English with date as per Ext. 3/2 and it cannot be disputed that P.W. 4 arrived at the spot after P.W.2 sent information to the Supdt.

of Police to send a Gazetted Officer. P.W.4 is not a member of the raiding party and he was not at all present there from the beginning. In the circumstances, I do not find any reason to discard the evidence of P.W. 4.

P.W.5 has categorically deposed to have taken up the investigation at the spot and he was not present there from the beginning. After the seizure was completed he went there and took up investigation. During investigation he kept the seized Ganja in safe custody and he has narrated in his evidence as to how he kept the Ganja in the police station malkhana before the same was kept in the Court Malkhana. I do not find any material on record to suspect that the sample Ganja has been tampered with and the same was not taken from the seized Ganja even if P.W. 2 has taken the samples of the recovered Ganja at the spot, the learned SDJM has drawn up samples himself from the recovered Ganja in duplicate and sent one of the samples for chemical examination which was found to be Ganja by the Chemical Examiner vide his report Ext. 7. Hence, I find that nothing but Ganja was recovered from the packets which were found in the bag hung on the handle of the seized moped and the seized moped was in possession of accused Pramod. I also find from the evidence adduced by the prosecution that all the mandatory provisions of the N.D.P.S. Act have been complied with in this case.

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12. On a careful scrutiny of the materials available on record and on a careful consideration of the submissions made by both the sides and the law involved in the matter, I am fully convinced that accused Pramod Kumar Pradhan was in illegal possession of 2 kgs, 30 grams of Ganja on 31.1.1998.

In the result, accused Pramod Kumar Pradhan is found guilty of the charge u/s 20 (b) of the N.D.P.S. Act and is convicted thereunder. Accused Niranjana Nayak is not found guilty of the charge u/s.29 and 20 (b) of the N.D.P.S. Act and is acquitted under benefit of doubt."

8. Aggrieved by the aforementioned findings leading to conviction and sentence recorded against the appellant, the appellant has filed the present appeal.

9. Mr. Debashis Sarangi, learned Amicus Curiae although tried to point out the inherent contradictions in the evidence of the prosecution witnesses, but he has pointed out that in view of the small quantity of contraband ganja involved in the case, the sentence imposed by the learned trial court is disproportionate. Having said that he has taken me to the proceeding of this Court dated 04.02.1999, wherein this Court, while dealing with the Misc. Case No.343 of 1998 for grant of bail, has passed the following order:-

"Order
Misc.

No.3
Case

4.2.1999
No.

343 of 1998 Heard.

It is submitted that the petitioner has already suffered imprisonment for the entire period of sentence imposed on him. Hence this Misc. Case has become infructuous.

The Misc. Case is disposed of accordingly.”

10. Pointing out the aforementioned proceeding, Mr. Debashis Sarangi, learned Amicus Curiae submitted that the appellant has already undergone the entire period of sentence awarded against him. Therefore, he submitted that this Court may not venture into the merits of the case, rather put a quietus to the matter in view of the fact that the appellant has already served out the sentence awarded by the learned trial court.

11. Regard being had to the submission made by the learned Amicus Curiae, which has not been disputed by the learned counsel for the State, the Criminal Appeal is disposed of in aforementioned terms.

12. This Court records the appreciation for the effective and meaningful assistance rendered by Mr. Debashis Sarangi, learned Amicus Curiae. He is entitled to an honorarium of Rs.7,500/- (Rupees seven thousand five hundred) to be paid as token of appreciation.