

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (S.J.) No. 726 of 2009

[Against the judgment of conviction dated 20.07.2009 and order of sentence dated 23.07.2009 passed by learned Special Judge-cum-Additional District & Sessions Judge (Fast Track Court-VI), Jamshedpur in Special Case No. 12 of 2000]

Sunil Kumar Singh, Son of Shri Kedar Singh, resident of Kanhakhurd, P.S. – Chatra, District – Chatra, Jharkhand.

... .. **Appellant**
 Versus
 State of Jharkhand **Respondent**

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For the Appellant : Mr. Naveen Kr. Jaiswal, Advocate
 For the Respondent : Mrs. Nehala Sharmin, Spl.P.P.

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P R E S E N T
HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA
JUDGMENT

C.A.V. on 17.06.2026 Pronounced on 30.06.2026

1. Heard learned counsel for the parties.
2. Present criminal appeal is directed against the judgment of conviction dated 20.07.2009 and order of sentence dated 23.07.2009 passed by learned Special Judge-cum-Additional District & Sessions Judge (Fast Track Court-VI), Jamshedpur in Special Case No. 12 of 2000 (arising out of Jugsalai (Bagbera) P.S. Case No. 126 of 2000, G.R. No. 1669 of 2000), whereby the appellant has been held guilty and convicted for the offence punishable under Sections 22(B) and 20 (B), 11(B) of the Narcotic Drugs and Psychotropic Substances Act and has been sentenced to undergo R.I. of 07 years along with fine of Rs. 50,000/- with default stipulation.

FACTUAL MATRIX

- 3.** The factual matrix giving rise to this appeal is based upon the written report of S.I., Arvind Kumar, Officer-in-Charge, Baghbera Police Station dated 17.10.2000 stating inter alia that the informant along with other police patrolling party was returning to police station at about 5:00 A.M. and reached near Chaibasa Bus Stand, then he noticed one person holding one heavy briefcase was coming from the Bus Stand. On suspicion, the person was signal to stop, but he started fleeing away and chased and apprehended. It is alleged that in presence of witnesses and Gazetted Officer namely, Prabir Kumar Bandopadhyay, upon search of the VIP briefcase, 12 Polythene Packs of Ganja weighing about 11 Kg was recovered from the possession of the petitioner. Accordingly, the case was instituted under Sections 20 and 22 of the N.D.P.S. Act.
- 4.** The appellant was charged for the aforesaid offences. He denied from the charges and claimed to be tried. After conclusion of trial, impugned judgment of conviction and sentence has been passed against the appellant, which has been assailed in this appeal.
- 5.** Learned counsel for the appellant has raised sole question of law that after examination of the seized

material from Forensic Science Laboratory, the report dated 29.11.2002 (Exhibit-6) was submitted wherein it was specifically opined that “the broken leaves of vegetable flowery substances was found to be “Bhang” not Ganja. However, ‘Ganja and Bhang’ both are cannabis.

6. Learned counsel for the appellant has submitted that in the Narcotic Drugs and Psychotropic Substances Act, 1985, “Bhang” is excluded from the ambit of the Act as punishable offence, therefore, conviction and sentence of the appellant is absolutely illegal and not warranted under law, which is fit to be set aside. The appellant deserves acquittal from the charges levelled against him by allowing this appeal.
7. Learned counsel for the appellant has placed reliance upon the recent reported judgment of Hon’ble Karnataka High Court in the case of **Roshan Kumar Mishra Vs. The State of Karnataka by Beguru Police Station [2022 SCC OnLine Kar 1484]**, also relied upon judgment of Hon’ble Punjab and Haryana High Court in the case of **Arjun Singh Vs. State of Haryana [2004 SCC OnLine P&H 828]**, also relied upon judgment of Hon’ble Bombay High Court in the case of **Madhukar Vs. The State of Maharashtra [2002 SCC OnLine 1271]** and also relied upon

judgment of Hon'ble Rajasthan High Court in the case of **Manjee Vs. State of Rajasthan [1996 SCC OnLine Raj 409]**.

- 8.** Learned Spl.P.P. appearing for the State has submitted that in FSL report itself, it is mentioned that 'Ganja' and 'Bhang' both are cannabis and the substance seized in this case comes under purview of NDPS Act, therefore, there is no illegality in the impugned judgment, calling for interference.
- 9.** I have gone through the record of the case along with impugned judgment and order in the light of contentions raised on behalf of both side.
- 10.** The sole point of law for consideration in this appeal is that "as to 'Ganja' come within the purview of N.D.P.S. Act as penal offence".
- 11.** It appears that in all the aforesaid four judgments relied by the learned counsel for the appellant, it has been held by different High Courts that bhang does not fall within the definition of cannabis (Hemp) as defined under Section 2(iii) of the Act. Thus, its possession does not constitute an offence punishable under the Act.
- 12.** The definition of Section 2(iii) of N.D.P.S. Act reads as under:-

"(iii) "cannabis (hemp)" means -

(a) charas, that is, the separated resin, in whatever form, whether crude or purified, obtained from the cannabis plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish;

(b) ganja, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated; and

(c) any mixture, with or without any neutral material, of any of the above forms of cannabis or any drink prepared therefrom;"

13. On bare reading of the provision under Section 2(iii)(a) and (b) that *charas* and *ganja* or (c) i.e., any mixture, with or without any neutral material, of any of the above forms of cannabis or any drink prepared therefrom, there is no scientific evidence before this Court to show that the Bhang is prepared out of either *charas* or *ganja* or ganja leaves. Since ganja leaves and seeds are excluded from the definition of ganja and nowhere in the NDPS Act the Bhang is referred as a prohibited drink or prohibited drug. Even the State Government has not made any rules under the NDPS and mentioned about the Bhang as prohibitory drug or issued any notifications in respect of Bhang.

- 14.** In view of above discussion and reasons and specific consideration, it is crystal clear that 'Ganja' and 'Charas' are included within the definition of cannabis (Hemp), whereas under N.D.P.S. Act, 'Bhang' is excluded, therefore, Bhang does not fall within the definition of cannabis (Hemp) as defined under Section 2(iii) of N.D.P.S. Act, rather cultivation of cannabis plant is punishable under Section 20(a) read with Sub-Clause (b)(i) of the N.D.P.S. Act. In the instant case, there is no allegation of cultivation of cannabis plant, rather possession of some substance like Ganja, which was ultimately found to be Bhang, which is specifically excluded from the purview of N.D.P.S. Act. Therefore, the conviction and sentence of the appellant for the offence under Sections 22(B) and 20(B), 11 (B) of the N.D.P.S. Act is absolutely illegal and not justified under law.
- 15.** Accordingly, the conviction and sentence of the appellant is hereby set aside and this appeal is **allowed**.
- 16.** The appellant is on bail. As such, he is discharged from the liability of bail bonds and sureties shall also discharged.
- 17.** Pending I.A., if any, stand disposed of.

18. Let a copy of this judgment along with trial court record be sent back to the court concerned for information and needful.

(Pradeep Kumar Srivastava, J.)

Jharkhand High Court, Ranchi

Dated, the 30th June, 2026.

Sunil / **N.A.F.R.**

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