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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 2329/2010

ABDUR RAZZAQ JOWON @ ASLAM .... Petitioner  
Through Mr. Madhu Sudan, Adv.

versus

STATE ..... Respondent  
Through Ms. Fizani Hussain, APP.

**CORAM:**

**HON'BLE MR. JUSTICE SANJIV KHANNA**

**ORDER**

% **30.09.2010**

1. This petition under Section 482 of the Code of Criminal Procedure, 1973 has been filed for modification of the order on sentence dated 20<sup>th</sup> may, 2010 passed by the Additional Sessions Judge.

2. By the judgment dated 12<sup>th</sup> May, 2010, the petitioner has been convicted under Section 5 of the Explosive Substances Act, 1908 and Section 14 of the Foreigners Act, 1946. The operative portion of the order on the point of sentence dated 20<sup>th</sup> May, 2010 records as under:-

“Under these facts and circumstances of both the convicted namely Alamgir Hussain Roni S/o Late Jan Mohd. and Abdur Razzaq Jiwon @ Aslam S/o Late Wilayat Hussain are hereby sentenced for the imprisonment already undergone by

them during investigation, inquiry and trial of this case with fine of Rs. One Lakh, in default of payment of fine the accused shall under go SI for One year. u/s 5 of the Explosive Substance Act.

Both the convicted namely Alamgir Hussain Roni S/o Late Jan Mohd. and Abdur Razzaq Jiwon @ Aslam S/o Late Wilayat Hussain are also sentenced for the imprisonment already undergone by them during investigation, inquiry and trial of this case with fine of Rs. One Lakh, in default of payment of fine the accused shall under go SI for One Year. u/s 14 of Foreigners Act. Both the sentences will run concurrently. The benefit of section 428 Cr.P.C. be awarded to both the convicted and period already undergone by them be set of for the sentence awarded to them. I think the sentence awarded will meet the end of justice.”

3. There is some confusion and it is not clear from the said order whether each of the accused i.e. the petitioner and Alamgir Hussain Roni are both liable to pay fine of Rs. 1 lac each or they are collectively liable to pay fine of Rs. 1 lac i.e. Rs. 50,000/- each for both offences under Section 5 of the Explosive Substances Act and Section 14 of the Foreigners Act.

4. It is stated that the petitioner is unable to pay fine because of poverty and per force will have to undergo simple imprisonment of two years i.e. one year each for the offence under the Explosive Substances Act and the Foreigners Act. This will be more than 50% of the substantive imprisonment i.e. the period undergone of 3 years

and 6 months. In the petition it is pointed out that the petitioner is a married man and has 6 daughters.

5. The petitioner has already been in jail for nearly 5 months after the order on sentence because he has not been able to pay the fine. Keeping in view the aforesaid facts, the order of sentence dated 20<sup>th</sup> May, 2010 is partly modified as under:-

(i) The petitioner will pay fine of Rs.50,000/- for the offence under Section 5 of the Explosive Substances Act and in default of payment of fine, he shall undergo simple imprisonment of 6 months. The petitioner will also pay Rs. 50,000/- for the offence under Section 14 of the Foreigners Act and in default thereof, he shall undergo simple imprisonment of 6 months.

The petition is accordingly disposed of.

**SANJIV KHANNA, J.**

**SEPTEMBER 30, 2010**  
**NA**