

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

Judgment delivered on: September 23, 2011

+ **CRIMINAL APPEAL NO.204/2011**

MOHD ISLAM

....APPELLANT

Through: Mr. A.K. Tiwari, Advocate

Versus

STATE, NCT OF DELHI

.....RESPONDENT

Through: Ms. Fizani Husain, APP

CORAM:

HON'BLE MR. JUSTICE AJIT BHARIHOKE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

AJIT BHARIHOKE, J.(ORAL)

1. This appeal is directed against the impugned judgment dated 15.11.2010 in NDPS case N No.18/2004 ID No.02403R0197862009 FIR No.72/2009 P.S. Crime Branch under Section 21/29 NDPS Act and consequent order on sentence dated 16.11.2010 whereby the appellant has been convicted for the offence punishable under Section 21(b) of NDPS act and sentenced to undergo RI for the period of 02 year and 06 months and also to pay fine of ₹20,000/-, in default thereof to undergo simple imprisonment for a period of three months.

2. The appellant was sent for trial on the allegations that on 21.05.2009 at 12:25 pm near Tivoli Garden, Chhatarpur, he was apprehended and searched on the basis of secret information and he was found in illegal possession of 260 gm of smack.

3. In order to bring home the guilt of the appellant, prosecution examined 11 witnesses in all. Statement of the accused under Section 313 Cr.P.C. was recorded wherein he denied the prosecution story. On consideration of the evidence, learned Special Judge found the appellant guilty of offence under Section 21(b) NDPS Act. He accordingly convicted and sentenced him.

4. Learned Shri A.K. Tiwari, Advocate appearing for the appellant, at the outset, on instructions from the appellant who is present in the court, submits that the appellant admits his guilt on merits and he does not wish to challenge his conviction under Section 21(b) of NDPS Act. Learned counsel, however, has confined his submissions against the quantum of sentence awarded to the appellant. It is submitted that the sentence awarded to the appellant is too harsh. The learned trial court failed to appreciate that the appellant is a young man and has a family to support. Learned counsel for the appellant submits that the appellant realises his mistake and he deserves an opportunity to reform himself as a useful member to the society. Thus, learned counsel has vehemently urged for reduction of the sentence awarded to the appellant.

5. Learned APP, on the contrary, submits that considering the gravity of the offence committed by the appellant, there is no reason for leniency and reduction of sentence in this case.

6. I have considered the rival contentions. Sentencing of an accused in a criminal matter is a serious exercise and the quantum of sentence imposed commensurate with the gravity of the offence committed by the accused and the circumstances under which the offence was committed. While dealing with the issue of sentence for the offences under Sections 3,4 & 6 of Terrorist and Disruptive Activities (Prevention) Act, 1987, Supreme Court in the matter of **Karamjit Singh v. State (Delhi Admn.), (2001) 9 SCC 161**, wherein the Supreme Court, has inter alia, observed thus:

"7. Punishment in criminal cases is both punitive and reformatory. The purpose is that the person found guilty of committing the offence is made to realise his fault and is deterred from repeating such acts in future. The reformatory aspect is meant to enable the person concerned to relent and repent for his action and make himself acceptable to the society as a useful social being. In determining the question of proper punishment in a criminal case, the court has to weigh the degree of culpability of the accused, its effect on others and the desirability of showing any leniency in the matter of punishment in the case. An act of balancing is, what is needed in such a case; a balance between the interest of the individual and the concern of the society; weighing the one against the other. Imposing a hard punishment on the accused serves a limited purpose but at the same time, it is to be kept in mind that relevance of deterrent punishment in matters of serious crimes affecting society should not be undermined. Within the parameters of the law an attempt has to be made to afford an opportunity to the individual to reform himself and lead the life of a normal, useful member of society and make his contribution in that regard. Denying such

opportunity to a person who has been found to have committed offence in the facts and circumstances placed on record would only have a hardening attitude towards his fellow beings and towards society at large. Such a situation, has to be avoided, again within the permissible limits of law.

8. After giving our anxious consideration to the question of reduction of sentence as urged on behalf of the appellant and objected to on behalf of the respondent, we have come to the conclusion that some consideration should be shown to the appellant in the matter. In coming to this conclusion we have taken into account the facts that he has spent a long period, more than thirteen years, in jail; that he was a young man of 21 years when he committed the act giving rise to the case; that the situation then prevailing in the State of Punjab was surcharged with acts of terrorism and several misguided young men were drawn into the movement; that in the meantime the movement has subsided and it could be reasonably taken that the State is free from the menace of terrorism. In taking the decision to show some consideration to the appellant in the matter of punishment we have reposed confidence in goodness of human character which is a part of the personality of every human being. We hope and believe that our confidence will not be belied in the case of the appellant. In the facts and circumstances of the case 165 and the changed social environment which has taken place in the meantime, it is our considered view that the sentence of life imprisonment should be modified to the period already undergone (about 13 years 7 months). Before being released from jail in the case, the appellant will notify the jail authority the place and the address at which he intends to stay, on receipt of which the jail authority will intimate the Superintendent of Police of that place with a request to him to keep the appellant under observation. If the Superintendent of Police finds that the appellant is indulging in any illegal activity which amounts to an offence under any law, he shall immediately send a report to the Registrar General of this Court. With this modification of sentence as noted above, this appeal is dismissed."

7. The appellant is a young man. He has been sentenced to undergo RI for the period of 2½ years besides fine. As per the nominal roll

received under the signatures of Superintendent, Central Jail No.4, New Delhi, on 10.03.2011 the appellant had already undergone incarceration for a period of 01 year 09 months and 19 days (actual). He is still in custody. More than 06 months have gone by since 10.03.2011. Thus, going by the details given in the nominal roll, by now the appellant has undergone custody for a period of 02 years and 04 months approximately. In my opinion, considering the amount of smack recovered from the possession of the appellant, the imprisonment already undergone by the appellant is sufficient and shall meet the ends of justice. Thus, taking into account the overall facts and circumstances of this case, while maintaining the sentence of fine imposed upon the appellant, the substantive sentence awarded to the appellant for the offence under Section 21(b) NDPS Act is reduced from 2½ years to the period already undergone in custody by the appellant.

8. The appeal is partly accepted subject to the aforesaid modification in the impugned order on sentence.

9. Copy of the order be sent to the concerned Jail Superintendent for being supplied to the appellant as also for information and necessary action.

(AJIT BHARIHOKE)
JUDGE

SEPTEMBER 23, 2011
pst