



2026:AHJ:91410

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 5484 of 2017

Saleem

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Amar Nath Singh, Ashutosh Gupta, Vandana Gupta
Counsel for Respondent(s)	: G.A.

Court No. - 93

HON'BLE MRS. VANI RANJAN AGRAWAL, J.

1. This Criminal Appeal is directed against the judgment and order dated 08.06.2017 passed by Additional Sessions Judge, Court No.3, Mathura in Special Sessions Trial No.60 of 2016 (State vs. Saleem) arising out of Case Crime No.601 of 2015 under Section 21/22 N.D.P.S. Act for ten years rigorous imprisonment and fine of Rs.1,00,000/- and in default of payment of fine further undergo six months additional imprisonment.

2. The prosecution version in brief is that on November 2, 2015, Sub Inspector K.P. Singh along with accompanying police personnel was busy in patrolling and searching for wanted criminals in the Deeg gate outpost area. At approximately 6:50 AM, while the police party was moving from Mahavidya Crossing towards Mahavidya temple, they spotted a person coming from the temple's direction. Upon seeing the police, the individual became startled and turned back towards Ramlila Maidan. Due to suspicion, he was ordered to stop but he did not. After a sudden chase and use of necessary force he was apprehended at 8:40 AM. Upon questioning his identity and conducting a personal search, he identified himself as Salim S/o of Babru. When asked why he tried to flee, he disclosed that he possessed Alprazolam intoxicated powder. Upon weighing it, the quantity was found to be 580 grams. A recovery memo was prepared on the spot. The contraband was sealed, and the accused was taken to the police station, where a case was

registered against him as Case Crime No.601 of 2015 under Section 21/22 N.D.P.S. Act.

3. The investigating officer took over the investigation, inspected the site of the incident, recorded the witnesses statements and submitted charge sheet against appellant Salim. The accused denied the charges framed against him and claimed for trial.

4. The prosecution in order to substantiate its case presented oral testimony of P.W.-1- Sub Inspector K.P. Singh, P.W.-2- Constable Balveer Singh, P.W.-3- Sub Inspector Subhash Chandra and P.W.-4- Surendra Singh.

P.W.-1 Sub Inspector, K.P. Singh in his examination-in- chief has fully supported the prosecution story stating that he was patrolling along with other police personnels and recovered 580 grams of powder taking 20 grams as sample.

P.W.-2 Balveer Singh has also supported the prosecution case stating that they took the signatures of the accused on the consent application and tried to gather independent witnesses but due favor no one turned up.

P.W.-3 Sub Inspector Subhash Chandra is the Investigating Officer who as secondary witness proved the chik report, Nakal Rapat, site plan of the place of occurrence, FSL report and charge sheet against the accused. He also mentioned that the samples were sent in the safe custody of Head Moharrir and with the permission of Circle officer.

P.W.-4 Surendra Singh took the samples from to FSL on 7.11.2015 and stated that while leaving he entered the Rawanagi in the GD.

5. Statements of the accused were recorded under section 313 Cr.P.C. in which they pleaded not guilty stating that he has been falsely implicated in the said case.

6. The Documentary evidences produced by the prosecution are:

- (i) Recovery memo as Ext. ka-1.
- (ii) Consent application as Ext. ka-2.
- (iii) Chik FIR as Ext. ka-3
- (iv) Carbon copy of Nakal Rapat as Ext. ka-4
- (v) Site plan as Ext. ka-5
- (vi) Forensic Science Laboratory report as Ext. ka-6
- (vii) Charge sheet as Ext. ka-7
- (iix) Form for sending the material for FSL testing as Ext. ka-8.

7. The Learned trial court after considering the submissions made by the counsels and appreciating the evidences both oral as well as documentary held that the prosecution has proved the guilt of the accused beyond reasonable doubt and the accused person Salim is held guilty under section 21/22 of NDPS Act.

8. The accused/appellant having been dissatisfied with the judgment of the trial court, filed this appeal.

9. Heard Ms. Vandana Gupta, learned counsel for the appellant and Sri Ashish Kumar Srivastava, learned A.G.A. at a considerable length and I have also been taken through the legal propositions and the material on record.

10. Learned counsels for the appellant have not seriously canvassed the conviction, however, it is urged that the appellant is in jail since 2.11.2015 and has already served out the entire sentence as awarded by the learned trial Court and he is in jail because he could not pay the fine due to the poorness and that this is his first offence. Thus, she prayed to reduce the period of default sentence which is six months additional imprisonment.

11. Considering the submissions made as above by learned counsel for the appellant as she has prayed for a limited relief and also taking in view the facts and circumstances of the case, there is no need to traverse the findings relating to the conviction recorded by the trial court. Accordingly, the conviction passed by the learned trial court is hereby confirmed.

12. Learned counsel for the appellant, however, laid much emphasis that as per the prosecution version 580 grams illicit Alprazolam was recovered from a white polythene which the appellant was carrying in his right hand, accordingly the appellant/accused was convicted in terms of Section 21/22 of the N.D.P.S. Act. The appellant was awarded 10 years rigorous imprisonment and fine of Rs.1 lac with default sentence of six months additional imprisonment. According to the learned counsel for the appellant, the default sentence of six months additional imprisonment passed as above by the learned trial court is very harsh. The learned trial judge ought not to have imposed such sentence for non-payment of fine.

13. The learned counsel to bolster his submissions relied upon **Santilal Vs. State of M.P. (2007) 11 SCC 243, Shahejad Khan Maheeb Khan Pathan Vs. State of Gujarat, (2013) 1 SCC 570 and Palaniappa Gounder Vs. State of Tamil Nadu 1977 (2) SCC 634.**

14. The next limb of the arguments of learned counsel for the appellant is that the appellant is very poor person. Therefore, to pay a fine of Rs.1 lac as imposed by the learned trial court for the offence, is impossible and is beyond his means. Besides, as general principle of law reflect in Sections 63 to 70 I.P.C. is that an amount of fine should not be harsh or excessive.

15. In **Shantilal's case (supra)** the Hon'ble Supreme Court held thus:

"31. ...The term of imprisonment in default of payment of fine is not a sentence. It is a penalty which a person incurs on account of non-payment of fine. The sentence is something which an offender must undergo unless it is set aside or remitted in part or in whole either in appeal or in revision or in other appropriate judicial proceedings or "otherwise". A

term of imprisonment ordered in default of payment of fine stands on a different footing. A person is required to undergo imprisonment either because he is unable to pay the amount of fine or refuses to pay such amount. He, therefore, can always avoid to undergo imprisonment in default of payment of fine by paying such amount. It is, therefore, not only the power, but the duty of the court to keep in view the nature of offence, circumstances under which it was committed, the position of the offender and other relevant considerations before ordering the offender to suffer imprisonment in default of payment of fine."

16. In Emperor Vs. Mendi Ali AIR 1941 All 310 this Court held thus:-

"So far as the fine is concerned, I cannot think it is proper, in the case of a poor peasant, to add to a very long term of substantive imprisonment a fine which there is no reasonable prospect of the accused man paying and for default in paying which he will have to undergo a yet further term of imprisonment. And, in my judgment, without venturing to say whether it is a course which is strictly in accordance with the law or not, I cannot help thinking that it becomes all the more undesirable to impose such a fine where the term of imprisonment to be undergone in default will bring the aggregate sentence of imprisonment to more than the maximum term of imprisonment sanctioned by the particular section under which he is convicted. I venture to think that Judges should exercise a careful discretion in the matter of superimposing fines upon long substantive terms of imprisonment."

17. In Shahejad Khan Maheeb Khan Pathan's case (supra) the apex court held:

"(12) It is clear and reiterated that the term of imprisonment in default of payment of fine is not a sentence. To put it clear, it is a penalty which a person incurs on account of non-payment of fine. On the other hand, if sentence is imposed, undoubtedly, an offender must undergo unless it is modified or varied in part or whole in the judicial proceedings. However, the imprisonment ordered in default of payment of fine stands on a different footing. When such default sentence is imposed, a person is required to undergo imprisonment either because he is unable to pay the amount of fine or refuses to pay such amount. Accordingly, he can always avoid to undergo imprisonment in default of payment of fine by paying such an amount. In such circumstance, we are of the view that it is the duty of the Court to keep in view the nature of offence, circumstances in which it was committed, the position of the offender and other relevant considerations such as pecuniary circumstances of the accused person as

to character and magnitude of the offence before ordering the offender to suffer imprisonment in default of payment of fine. The provisions of Sections 63 to 70 of IPC make it clear that an amount of fine should not be harsh or excessive. We also reiterate that where a substantial term of imprisonment is inflicted, an excessive fine should not be imposed except in exceptional cases.

15. It is clear that clause (b) of sub-section (1) of Section 30 of the Code authorizes the Court to award imprisonment in default of fine up to 1/4th of the term of imprisonment which the Court is competent to inflict as punishment for the offence. However, considering the circumstances placed before us on behalf of the appellants-accused, viz., they are very poor and have to maintain their family, it was their first offence and if they fail to pay the amount of fine as per the order of the Additional Sessions Judge, they have to remain in jail for a period of 3 years in addition to the period of substantive sentence because of their inability to pay the fine, we are of the view that serious prejudice will be caused not only to them but also to their family members who are innocent. We are, therefore, of the view that ends of justice would be met if we order that in default of payment of fine of Rs.1.5 lakhs, the appellants shall undergo RI for 6 months instead of 3 years as ordered by the Additional Sessions Judge and confirmed by the High Court."

18. In the instant case, no doubt the learned trial court has imposed a minimum punishment for the offence under Section 21/22 of the N.D.P.S. Act. However, the default sentence for non-payment of fine imposed to further undergo six months additional imprisonment is too harsh. The learned trial court while passing the default sentence of six months additional imprisonment has not taken into consideration the financial capacity of the appellant to pay the fine and ordered to go additional imprisonment for six months in default. As held by this Court in **Mendi Ali's case (supra)**, the Judge should exercise a careful discretion in the matter of superimposing fine upon long substantive terms of imprisonment, and the default sentence should not be very harsh.

19. Thus, considering the submissions made by learned counsel for the parties and for the reasons discussed herein above, the appeal is partly allowed. The conviction recorded by the trial court is hereby confirmed. The

sentence of 10 years rigorous imprisonment and fine of Rs.1 lac is also upheld and default sentence of six months additional imprisonment is reduced to the period already undergone by the appellant in jail.

20. Since, the appellant has already completed 10 years of sentence in jail and therefore, in view of the modified period of default sentence, the appellant has already spent more than the period in jail even in respect of the default sentence. Therefore, there is no need to the appellant to continuing in prison in case he has completed 10 years sentence as awarded by the learned trial Court in jail. The appellant-Saleem shall be set at liberty forthwith provided he has completed sentence of ten years as awarded by the learned Court and/or unless he is required in any other case.

21. The appeal is partly allowed to the extent mentioned as above.

22. The trial Court record be sent back to the learned trial Court concerned for necessary compliance.

April 10, 2026
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(Mrs. Vani Ranjan Agrawal,J.)