

Date of decision: 30th April, 2015

+ CRL.A. 1376/2012 & CrI.M.A.No.2657/2015		
BADRI SAHNI		 Appellant
	Through:	Mr Rajender Chhabra, Advocate (DHCLSC)
	versus	
STATE		 Respondent
	Through:	Mr O.P. Saxena, Additional Public Prosecutor for the State
%		
CORAM:		
HON'BLE MS. JUSTICE SUNITA GUPTA		

: SUNITA GUPTA, J. (ORAL)

1. This is an appeal u/s 374 (2) Cr.P.C challenging the judgment and order on sentence dated 24th January, 2012 passed by Sh. Narinder Kumar, Special Judge (Central), Delhi vide which the appellant was convicted under Section 20 of Narcotic Drugs and Psychotropic Substances Act (for short 'NDPS Act') and sentence to undergo rigorous imprisonment for five years and to pay fine of Rs.50,000/-, in default to further undergo rigorous imprisonment for three months.

2. During the course of arguments, learned counsel for the appellant did not challenge the legality of the order of conviction vide which the appellant was convicted under Section 20 of NDPS Act, but prayed for leniency in quantum of sentence on the ground that out of five years sentence awarded to the appellant, he has already undergone sentence for a period of more than four years. The appellant has moved an application bearing CrI. M.A. No. 2657/2015 for releasing him on the period already undergone. It is further submitted by learned counsel for appellant that co-accused – Lakhi Chand Paswan was released by this Court vide order dated 27.01.2015 on the period already undergone as such the present appellant – Badri Sahni be also granted the same relief.

3. The conviction of the appellant was rightly not challenged by the learned counsel for the appellant, inasmuch as, as per the prosecution case, the appellant/accused was found in possession of 15 kilos of *ganja*. In order to substantiate its case, prosecution in all examined 10 witnesses. Statement of accused was one of denial simplicitor and it was pleaded that the accused along with co-accused had come from Nepal for work and, as such, were present at the platform of Old Delhi Railway Station. They were taken to police station and then falsely implicated in this case. After scrutinising the testimony of the prosecution witnesses, the learned Trial Court convicted the appellant for offence under Section 20 of NDPS Act. No fault can be found with this finding of the learned Trial Court.

4. While releasing the co-convict – Lakhi Chand Paswan on the period already undergone by him in custody, this Court has relied upon the judgment rendered in *Crl. Appeal No.613/2104 Edom Simon Chimezie vs. State of NCT of Delhi and E. Michael Raj vs. Intelligence Office, Narcotic Control Bureau, (2008) 5 SCC 161 and State v. Hari Krishan Guthala & Ors.* rendered on 21st April, 2014.

5. As per the nominal roll out of five (5) years rigorous imprisonment, the appellant has already undergone a period of four (4) years, three (3) months and three (3) days. His overall conduct has been reported to be satisfactory and he is not involved in any other case as such the substantive sentence awarded to him is modified to the period already undergone by him in custody while keeping the sentence of fine unaltered.

6. Accordingly the appeal is partly allowed. Pending applications, if any, also stands disposed of.

Copy of the judgment be sent to the Superintendent, Jail for information to the appellant and compliance.

Copy of the judgment along with Trial Court record be sent back.

(SUNITA GUPTA)
JUDGE

APRIL 30, 2015/rd