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

*Judgment delivered on: 29<sup>th</sup> January, 2016*

+ CRL.A. 686/2001

DARIO VUANELLO

..... Appellant

Represented by: None.

Versus

CUSTOMS

..... Respondent

Represented by: Mr. Satish Aggarwala and  
Ms. Pooja Bhaskar, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE SURESH KAIT**

**SURESH KAIT, J. (Oral)**

1. By way of the present appeal filed under Section 374 (2) Cr.P.C. appellant has challenged the order dated 31.08.2001, whereby he was held guilty for the offences punishable under Section 20 (b) (ii) and Section 28 read with Section 23 of NDPS Act.

2. Further challenged the order on sentence of the even date, whereby he was sentenced to undergo RI for a period of 10 years with fine of Rs.1,00,000/- for the offence punishable under Section 20 (b) (ii) of NDPS Act and in default of payment of fine, he was further sentenced to undergo SI for a period of six months.

3. As regards the offence under Section 28 read with Section 23 of NDPS Act, the appellant was sentenced to undergo RI for a period of 10 years with fine of Rs.1,00,000/- and in default of payment of fine, he was

further sentenced to undergo SI for six months.

4. Vide order dated 12.07.2006, the sentence of the appellant was suspended. Since, appeared none on his behalf, vide order dated 14.07.2015, non-bailable warrants to be executed through SHO concerned were directed to be issued against the appellant. However, the said warrants could not be executed upon the appellant. Moreover, the surety of the appellant namely Mr. Ajay Kumar Baluni moved an application vide Crl. M.A. 14776/2015 on the ground that he is not able to produce the appellant and sought discharge of his surety bond. Accordingly, vide order dated 07.10.2015, the said surety was directed to deposit the surety bond amount of Rs.50,000/- with the Registrar (Appellate).

5. It is established from order dated 23.11.2015 passed by the Registrar (Original) that the surety of the appellant had deposited two drafts being no. 247728 and 247729 for an amount of Rs.40,000/- and Rs.10,000/- respectively issued by UCO Bank, Delhi High Court Branch in terms of order dated 07.10.2015.

6. As noted above, presence of convict could not be procured. Identical situation has been dealt by the Division Bench of this Court in ***Mukesh v. State 152 (2008) DLT 201 (DB)*** and pertinent observations have been made as under:

*'In most cases, the interests of convict may not be adequately safeguarded by the appointment of Advocates in Legal Aid Scheme or by Amicus Curiae. The appellant would be satisfied only if his appeal is argued by an Advocate of his choice. On the other hand, a party which chooses not to participate in the hearing of his appeal can scarcely complain of*

*violations of his fundamental right to remonstrate against the curtailment of his personal freedom. A convict cannot abuse the process and defeat criminal justice'*

7. Recently, the Supreme Court in ***Mohd. Sukur Ali v. State of Assam (2011) 4 SCC 729*** has reiterated that a Criminal Appeal ought to be decided in the absence of the Counsel.

8. The aforesaid observations made in ***Mukesh (Supra)*** and ***Mohd. Sukur Ali (Supra)*** is aptly applied to the instant case. Moreover, none appeared on behalf of the appellant, despite sufficient opportunities given and his sentence has already been suspended by this Court during the pendency of appeal. Thus, it seems that appellant is not interested to pursue the present appeal.

9. Accordingly, the present appeal is dismissed.

10. TCR be remitted henceforth with copy of this order.

11. Let learned Trial Court/Successor Court to procure the appearance of convict and commit him to Prison for serving the remaining sentence.

**SURESH KAIT, J**

**JANUARY 29, 2016**

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