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

DECIDED ON : 19th FEBRUARY, 2016

+ **CRL.A. 164/2013 & CRL.M.A.No.2916/2016**

MA SOL BAILLO

..... Appellant

Through : Ms.Sunita Arora, Advocate with
Mr.Krishan Kumar, Advocate.

versus

STATE (DRI) OF DELHI

..... Respondent

Through : Ms.Pooja Bhaskar, Proxy counsel
for Mr.Satish Aggarwala,
Advocate.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.Garg, J. (Oral)

1. The instant appeal has been filed by the appellant – Ma Sol Baillo to challenge the legality and correctness of a judgment dated 18.09.2012 of learned Additional Sessions Judge in Sessions Case No.71A/2006 under Sections 21/23 NDPS Act by which she was held guilty for committing offences 21(c) & 23(c) read with Section 28 of the NDPS Act. By an order dated 20.09.2012, she was awarded RI for ten

years with fine ₹1 lac each under both the heads. The sentences were to operate concurrently.

2. In nutshell, allegations against the appellant stated in the complaint were that on 12.06.2006 at about 05.15 p.m., an intelligence was gathered by K.S.Ratra, Intelligence Officer that a lady i.e. the appellant holding Philippines passport was bound for travel to Bangkok by flight No.TG-316 at 10.00 p.m. from IGI Airport with one checked-in-baggage (suitcase) containing 2 kg. of heroin in false bottom. The said information was reduced into writing (Ex.PW-1/A). The team arrived at the airport and intercepted the appellant holding the Philippines pass-port. She was apprised about the secret intelligence. Notice under Section 50 of NDPS Act (Ex.PW-7/B) was served upon her. On search of the suit case, she was found in possession of 2.100 kg. of heroin; the net weight of which was 2 kg. Subsequent proceedings were conducted during investigation. Upon completion of the investigation, a complaint was filed in the Court. The prosecution examined twelve witnesses to prove its case. In 313 Cr.P.C. statement the appellant denied her involvement in the crime and pleaded false implication. The trial resulted in her conviction as aforesaid.

3. During the course of arguments, appellant's counsel on instructions stated at Bar that the appellant has opted not to challenge the findings of the Trial Court on conviction. She, however, prayed to modify the sentence order as the appellant has already undergone substantive sentence awarded to her. She is unable to pay the huge fine being a foreign national and in custody for the last more than nine years.

4. Since the appellant has opted to accept the findings of the Trial Court on conviction, in the presence of overwhelming evidence, her conviction under Sections 21(c) & 23(c) read with Section 28 of NDPS Act is affirmed.

5. Regarding Sentence Order, it transpires that she has already undergone almost the entire substantive sentence awarded to her. Nominal Roll dated 14.08.2015 reveals that she has remained in custody for nine years, two months and two days as on 14.08.2015. She is not involved in any other criminal case and is not a previous convict. Substantive sentence i.e. RI for ten years cannot be modified or altered as it is the minimum sentence prescribed under the Act. The appellant has been further sentenced to pay a fine of ₹1 lac each under both the heads and in default of its payment, she is to suffer SI for three months each. The appellant is

unable to pay the fine but since this is the minimum amount of fine which is prescribed under the Section, it cannot be changed.

6. The appellant was earlier granted interim bail for a period of four weeks from the date of release on her furnishing personal bond in the sum of ₹10,000/- with one surety of the like amount vide order dated 18.09.2015. She, however, could not furnish the required surety bonds due to her poor economic condition. Sentence order records that the appellant is aged around 44 years and is having sole responsibility to maintain her three children in her native country. Her younger son has a hole in his heart.

7. In the case of '*Shahejadjkhan Mahebubkhan Pathan vs. State of Gujarat*', 2012 (10) SCALE 21, decided on 05.10.2012, the Supreme Court reduced the sentence from 15 years to 10 years as the appellant therein had already served nearly 12 years in jail. The order on payment of fine of ₹1,50,000/- was upheld but default sentence was reduced from RI for 3 years to RI for 6 months. The appellant therein was found in possession of 500 grams of brown sugar and was convicted for the offence punishable under Section 8(c), 21 and 29 of NDPS Act. The Division Bench of Gujarat High Court had dismissed the Crl. A. No. 11 & 75/2002 vide order dated 08.07.2002.

8. Taking into consideration Section 30 of Cr.P.C. and the judgment of '*Shahejadkhan Mahebubkhan Pathan vs. State of Gujarat*', (supra), the sentence order is modified to the extent that default sentence for non-payment of fine ₹1 lac each shall be SI for one month each instead of three months each. Other terms and conditions of the sentence order are left undisturbed.

9. Appeal stands disposed of in the above terms. Pending application also stands disposed of. Trial Court record be sent back forthwith with the copy of the order. A copy of the order be sent to the Superintendent Jail for information.

(S.P.GARG)
JUDGE

FEBRUARY 19, 2016 / tr